# REVIEW OF THE ONTARIO CHILD ABUSE REGISTER

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# REVIEW OF THE ONTARIO CHILD ABUSE REGISTER

for

**Ontario Ministry of Community and Social Services**


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## SUMMARY

The Ontario Child Abuse Register is a confidential, centralized index and repository of information about child abuse cases in the province. While almost every jurisdiction in North America has some form of register, they are highly controversial and a number of states and provinces are in the process of reassessing the role of registers in the societal struggle against child abuse. Registers have the potential to provide vital information to assist in dealing with a problem the dimensions of which are just beginning to be understood; however, some critics have questioned the reliability and efficiency of registers. Others have raised more fundamental challenges, arguing that child abuse registers are the tools of a powerful and too often insensitive state bureaucracy, and have too much of a "Big Brother" aura to continue to exist in our democratic society.

A form of register was first established in Ontario in 1966. Although in 1977 the Child Abuse Committee of the Ministry of Community and Social Services recommended the abolition of a register containing identifying information, the register was substantially restructured and brought under the regulation of provincial child protection legislation in 1979. Four Ministry-sponsored reports from 1982 to 1985 documented various problems and concerns about the present Register, but failed to provide a complete set of recommendations. The current Review has been undertaken by a team of researchers and practitioners headed by Professor Nicholas Bala of the Faculty of Law at Queen's University, and coordinated by the University's Social Program Evaluation Group.

The stated purposes of the present Register are:

(1) to learn more about child abuse, both for research and practice purposes;

(2) to assist in tracking or identifying abused children, their families and suspected abusers so that protection efforts may continue uninterrupted; and

(3) to monitor child abuse case management and programs.

Further, many social workers and Ministry publications have identified deterrence as a possible function of the Register.

Reports of suspected child abuse cases in Ontario are made by professionals and individuals to the 51 local Children's Aid Societies (CASs) which are responsible for conducting an immediate investigation. If the CAS is satisfied that abuse has been "verified", on the basis of "credible evidence", a report must be made to the central Register in Toronto. Over 2,000 reports were made in 1986; over 10,000 individuals are now identified as abusers on the Register. A report to the Register identifies the abused child and the abuser, and provides a summary of information about the case. CASs are required to submit an updated report after four months and annually thereafter until the case is closed.

Persons who are identified on the Register as abusers are notified, and have the right to seek "expunction" (removal) of their names. This process involves a hearing before a person who is not legally trained, but who has a background in the social service field. Hearing Officers are not Ministry employees and are retained on a per diem basis. Names are only removed if there is not "credible evidence" to support a finding of abuse. The process of verification and registration is quite

separate from any child protection proceeding which may occur in Family Court or any criminal prosecution which the police and Crown Attorney may conduct. For a name to be on the Register it is not necessary that there be a conviction or other judicial proceeding.

The Register is a confidential list. Access is primarily limited to Ministry and CAS staff involved in investigating or managing child abuse cases. Current Ministry policy excludes use of the Register for the purpose of screening individuals for any employment or other positions, though there has been some use of the Register for this purpose.

Chapter I of this report provides an introduction, while Chapter II reviews the experience of other jurisdictions with child abuse registers. Almost every American jurisdiction has a register. In 32 states registers are used for screening employees and volunteers who work with children. A number of states have registers which distinguish in some way between cases which are confirmed by judicial process and those which are merely "indicated" or "suspected". A number also have registers which distinguish cases "under investigation" from those where a definitive determination of abuse has been made American jurisprudence suggests that while registers do infringe upon "liberty and security of the person", they are not unconstitutional if they provide for notification to abusers and a fair method for correcting cases where abuse has been improperly recorded.

In Manitoba, a recent judicial decision found that the province's confidential register violated s.7 of the *Charter of Rights*. The Manitoba legislation did not

guarantee an abuser the right of notification nor did it provide a process for seeking removal of a name. Since the court decision, new legislation has been enacted in Manitoba which provides greater protection for the rights of those placed on the register. Names are only to be placed on the register if there is a civil or criminal finding of abuse, or if a process is followed which provides for registration to be reviewed by a three member tribunal which must be satisfied on the balance of probabilities that abuse has occurred. However, the new Manitoba register is also to be used for screening purposes.

Nova Scotia has a confidential register where registration can be reviewed by a Family Court judge who will order removal of a name unless satisfied on the civil standard of proof that abuse has occurred. This register has recently withstood constitutional challenge in the courts.

British Columbia, Alberta, Saskatchewan, Prince Edward Island and Newfoundland do not have formal child abuse registers, but do have indexes of all child protection cases in the province. These indexes serve many of the same functions as a register, and also raise many of the same civil liberties issues. Quebec has a statutory register which records the names of abused children and is not used for screening.

Chapter III reports on the methodology of this study and contains the major empirical findings. Staff in all 51 CASs in Ontario were surveyed for their views and experiences with the Register; there were visits to 10 agencies, and the other 41 were surveyed through mailed questionnaires. Ministry Program Supervisors were

contacted in a similar manner. Altogether over 800 CAS and Ministry personnel provided responses. Interviews were also conducted with lawyers, coroners, school board representatives, researchers and with the individuals who preside over expunction hearings. Position papers were sought from different groups and agencies. Further, the views of interested citizens and registered abusers were solicited through advertisements and articles. Letters were sent via 10 CASs to a sample of persons whose names were placed on the Register in 1986. Over 60 individuals who are identified on the Register as abusers contacted us to share their views and experiences.

One major finding was that there is substantial variation in how the criteria for registration are applied by child protection staff. This was revealed through direct questions as well as through questions about which factors were considered important for registration. The variability was starkly revealed in an exercise in which CAS staff were required to indicate whether they would register a person in each one of six given fact situations (Table 10). The substantial variation in how criteria for registration are applied may in part be attributable to the fact that half of the CAS Front Line Workers have only three years or less experience in the child protection field, and there has been no province-wide training in the registration process in over five years. Though in theory a degree of conformity may be achieved by the requirement that the Executive Director or a designate in each CAS sign the reporting forms, in practice the crucial assessments about registration are usually made by the Front Line Workers.

CAS staff expressed considerable dissatisfaction with the forms used for reporting, and indicated the time limits for completion of the forms were frequently not met. They also complained of slow call-back time from Register staff in responding to their phone calls to check for previous registrations. The recently completed computerization of records may improve this situation in the future.

A majority of child protection professionals supported the present 25 year time period for keeping names on the Register (Table 16, p. 80); some commented there should be a review process for earlier removal of names for individuals who had successfully undergone treatment. Almost all lawyers representing registrants supported the establishment of a process for early removal. There was a great deal of support for some restrictions on the registration of minors who were abusers, in particular for not reporting as abusers children under 12 years of age and for having some process for the review of young abusers placed on the Register.

In the 1980-86 period, approximately 5 percent of registered abusers sought expunction; about 20 percent of these requests resulted in a voluntary CAS decision to remove a name, and 14 percent resulted in a hearing, of which about one-quarter ended in an expunction order (Table 17, p. 83). While almost one-half of CAS personnel were generally satisfied with the expunction process, about one-half of CAS Directors and lawyers and a substantial majority of registrants' lawyers favoured having legally trained Hearing Officers decide whether a name should be removed. There was also a concern among almost all of the registrants' lawyers and the CAS lawyers that the standard of proof, "credible evidence", is too low.

This standard means there must merely be strong suspicion of abuse, and this is generally not considered sufficient by lawyers involved in the process.

The registered abusers heard from generally perceived the process of registration as having a strong impact on their lives and many complained of CAS workers having arbitrary powers. Those who were acquitted in criminal proceedings and still had their names on the Register were particularly discontented.

Most CAS staff and Ministry Program Supervisors favoured using the Register for screening persons who will hold positions of responsibility for children (Table 21, p. 103), as did many child-serving organizations. However, there also seemed to be recognition that the rights of registered persons have to be more fully protected if the Register is used for this purpose.

While most CAS Directors and Supervisors regard the most important function of the Register as assisting in identification of abuse cases by providing information about a prior history of abuse (Table 22, p. 106), its actual utility for this purpose is limited. During a six-week study period, in only one percent of all cases where the Register was contacted by the CAS was it clear that the agency learned of a prior history of abuse of which it was unaware (Tables 14 and 15, pp. 78 and 79).

Approximately one-third of CAS Workers reported that they had handled at least one case where the registration of an abuser had discouraged future abuse, while about one-quarter thought registration had no deterrent effect (Table 23, p. 109).

Approximately four-fifths of MCSS Program Supervisors, and CAS Directors and Supervisors want to continue any form of register but with modifications. Few would discontinue the Register; those with the highest proportion favouring disbandment were Supervisors (21%). The Front Line Workers were only asked the question in the ten CASs visited, and most wished to continue it in some form.

Chapter IV provides an assessment of the present Register. The Register has very limited utility for identification and its deterrent effect is questionable. It is not effectively used for research or case management. There is substantial variability in the application of criteria for registration and the entire process raises very serious civil liberties concerns. The current Register has insufficient safeguards to be used for screening. **The Register system, in its present form, should be discontinued.**

Disbandment of any form of register may be considered a viable option by some, but a significantly restructured register can play an important role in combating child abuse without compromising the rights of individuals identified as abusers.

**MAJOR RECOMMENDATIONS:**

Chapter V contains recommendations for a new Ontario Child Abuse Register system, based on the creation of two separate "sub-registers". The Register of Child Abusers and the Child Abuse Research Register would each have a distinct function and manner of operation.

The Register of Child Abusers would list the names of those who have been confirmed as abusers, either by judicial determination or by admission. Mere suspicion will no longer be sufficient to register a person. This scheme will ensure due process and sufficient certainty to allow this Register to be used for screening of employees and volunteers. Children under 12 should not be identified as abusers.

Names should be placed on the Register of Child Abusers if there is:

(i) a conviction for a criminal offence involving child abuse; or

(ii) a written admission, signed by the abuser in the presence of a police officer or CAS worker; such admissions should not be admissible in any criminal proceedings, and individuals should be advised of the right to consult counsel before making an admission; or

(iii) a finding by a Family Court judge that, on the balance of probabilities (the civil standard), the individual has abused a child; such a finding may be made as part of a child protection proceeding, or through a special new civil child abuse registration proceeding based on evidentiary and procedural rules similar to those applicable in child protection cases in Family Court; in cases which are not contested, there should be a process for a judicial determination based on affidavit evidence; or

(iv) a finding by any court or tribunal of competent jurisdiction that, at least on the civil standard of proof, an individual has abused a child.

For the purposes of the Register of Child Abusers, the definition of "abuse" should be modified so that it covers intra- and extra-familial acts. At present, at least in theory, "abuse" is only recorded if the abuser "has charge of a child". This has been judicially interpreted as requiring the abuser to have custody of a child.

The definition of "abuse" should also be redrafted to make clear that individuals are abusers only if they have caused harm to a child. Parents who, on religious grounds, refuse to consent to a blood transfusion for their child should not be labelled "abusers", though at present they may be registered.

Individuals whose names are placed on the Register of Child Abusers should be notified of that fact and of their rights, which would include a right to inspect the Register and to seek removal of their names. Applications for removal could be made after five years from the date of registration, with an onus on applicants to establish they have been rehabilitated and have not committed further abusive acts. For individuals placed on the Register for acts committed when they were under 18, there should be an automatic review after 5 years, with a presumption in favor of removal. Initial application for removal of a name would be to the CAS, with a right of appeal to the Family Court.

A Register of Child Abusers would be useful for CASs investigating suspected cases of child abuse by indicating whether there is a history of such behaviour. The primary utility would be for screening of employees, volunteers, foster parents and others who may occupy positions of responsibility for children. Access for screening should be only with the consent of the individual being screened, though individuals who refuse to consent may be excluded by employers from occupying positions of responsibility for children. The Register should otherwise remain confidential.

A Child Abuse Research Register should also be established. It would contain non-identifying information about all suspected or confirmed cases of child abuse. Such a Register has the potential to serve an important role in providing information about the scope and dimensions of child abuse in Ontario. The Ministry should regularly analyze and disseminate information from the Child Abuse Research Register. This Register may also have an internal case management function for individual CASs, as on an internal basis agencies will have to continue to specifically identify all confirmed or suspected child abuse cases before reporting them anonymously to the Research Register.

With the abolition of a central register containing identifying information about suspected abuse cases, it will be crucial for individual CASs to keep track of their own high-risk cases and have controlled access to information from other CASs. The question of interagency sharing of information has implications for provincial protection of privacy legislation; this issue requires further study and perhaps legislative action.

The question of interprovincial information sharing will also have to be pursued in the future. While a national child abuse register does not presently seem necessary or feasible, it is desirable to standardize concepts and procedures, as well as provide for access to the Ontario child abuse register system by appropriate extraprovincial agencies.

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## CHAPTER I

## THE ONTARIO CHILD ABUSE REGISTER: AN INTRODUCTION

The Ontario Child Abuse Register is a confidential, centralized index and repository of information about child abuse cases in the province. Almost every jurisdiction in North America presently has some type of register; Ontario has had a form of register since 1966. Despite their widespread use, registers remain highly controversial, and a number of jurisdictions are in the process of reassessing the role of registers in the societal struggle against child abuse. Registers may be viewed as having the potential to assist in dealing with a problem whose dimensions are just beginning to be understood, but some question their reliability and efficacy. Others raise more fundamental objections, arguing that registers are the tools of an increasingly powerful and intrusive state bureaucracy and should be abolished. It must be recognized that while registers gather and disseminate information which may be important for the battle against child abuse, it is also highly sensitive information which can prejudicially affect individuals if it is unreliable or misused.

The Ontario Register is intended to aid in the detection and prevention of child abuse by assisting in the identification of abused children and abusers, and by facilitating research and case management. It is also thought that the Register may serve as a deterrent to abuse, and as a vehicle for public education and policy development. Although not presently an authorized use for the Ontario Register, it has the potential to serve as a screening device to allow those who recruit individuals to work with or care for children to learn whether those individuals have a history of abusing children. Registers are now being used as a screening device in a significant number of North American jurisdictions, and there has been some use of the Ontario Register for this purpose.

This report will assess the present operation and utility of the Ontario Child Abuse Register, and consider various options for reform, including the possibility of disbandment. The report thus focusses on the Register, but it is important to appreciate that a register is only one relatively small part of a broader societal response to the extraordinarily complex problem of child abuse. A register must be viewed in its broader context, and in its relationship to different institutions and to the rights of individuals. The kind of register a jurisdiction has, or whether it has a register at all, is clearly related to an overall structure and philosophy for dealing with child abuse.

### HISTORY

In the early 1960s, there was a growing recognition of child abuse, which up to that time had been virtually ignored as a major social problem. In 1965, Ontario first enacted legislation requiring the reporting of incidents of child abuse or neglect to a Children's Aid Society (CAS) or a Crown Attorney.[1] A year later, as an administrative act, the Child Welfare Branch of the Ministry of Community and Social Services established the Central Registry of Child Abuse, to record reports of

child abuse or neglect received by CASs and Crown Attorneys throughout the province. Abuse was considered to include physical, sexual and emotional abuse, as well as neglect.

In the early 1970s, a study of child abuse in Ontario by Cyril Greenland identified a number of serious problems in the operation of the Registry.[2] He observed that many child abuse cases were not reported to the Registry at all, and for cases reported, data were often incomplete. He expressed concern about the lack of a standardized definition of child abuse or neglect, and noted that the limited use of the Registry by CAS staff suggested a lack of confidence in its value. Greenland observed that "it is inadequate for research purposes and apparently ineffective for service", and raised the question of whether it should be discontinued. He concluded, somewhat equivocaliy, that the Registry should be reorganized with an emphasis placed on obtaining information relating to family function and dysfunction, and on alerting "the responsible authority of repeated abuse."

In 1977, the Ministry Committee on Child Abuse questioned the utility of the Registry as a means of identifying child abuse situations:

> . . . . the Registry has not reflected significant numbers of repeat abusers moving about the province. The assumption has been that abusers, once reported, might move around the province to avoid prosecution or other social intervention by the Societies. However, an unpublished study by this Ministry in 1973-74 revealed that only approximately 10% of abusers reported to the Central Registry had been reported previously to the Registry and that less than 1% of these individuals had moved from one Society jurisdiction to another. It appears that some repeat abusers do "shop" for medical treatment of the injured child at different hospitals or from different doctors, but most often they do so within one Society jurisdiction. Consequently, it is argued that while identifying information on suspected abusers is essential in each locality, there appears to be no value for a province-wide registry.
>
> In addition, it appears that knowledge of a previously reported incident generally has not been relied upon by professionals in establishing a clinical diagnosis or developing a treatment plan. Great risk of mistaken diagnosis exists when a suspicion may be confirmed by a report of previously suspected abuse.[3]

The Committee also had concerns about the potential for the misuse of information and for the erosion of civil liberties, and it recommended that the Registry should only gather non-identifying social data for research purposes.

However, a subsequent review carried out by the Ministry of Community and Social Services led to the development of a new register established by legislation under the *Child Welfare Act, 1978*[4], and put into operation on June 15, 1979. This legislation had provisions restricting access to the Register, and giving registered persons the right to confirm that their name was on the Register and to seek expunction. The names and information contained in the old Registry were not included in the Register established in 1979. The operation of the Register is now

governed by the *Child and Family Services Act (C.F.S.A.)*[5] , which came into force on November 1, 1985. This piece of legislation governs all aspects of the child welfare system in Ontario. The *C.F.S.A.* slightly modified the definition of "abuse", but as regards to the actual operation of the Register it essentially re-enacted the provisions of the *Child Welfare Act, 1978.*

When the Ontario Centre for the Prevention of Child Abuse was established in 1983, the Register was located in the Centre, though the Ministry retained responsibility for the Register and its staff. As the Centre evolved, it became increasingly autonomous from the Ministry of Community and Social Services, and it was decided that the operation of the Register should be located separately from the Centre. It was felt that maintaining highly personal records should clearly be a direct function of government. The transfer of operations was effected in March, 1986.

At first the Register was a manually-based system, but in 1987 the process of computerization was completed. The computerization of records should significantly enhance the possibilities for analyzing data and increase the speed of responding to inquiries.

## PURPOSES AND OPERATION

The operation of the Ontario Child Abuse Register is governed by sections 68, 71 and 72 of the *C.F.S.A.*, and by regulations made pursuant to the Act. Those who work with the Register make extensive use of two Ministry publications which explain the provisions of the legislation and regulations in non-technical language, and set out Ministry policies and guidelines: *Guidelines for Reporting to the Register (1981),*[6] and *The Child Abuse Register: Guidelines for Expunctions (1982).*[7]

The purposes of the Register are set out in *Guidelines (1981)*:

> The Central Register is intended to be a useful tool in the overall effort to protect children and prevent child abuse.
>
> Some of the specific reasons for its establishment were:
>
> 1. to learn more about child abuse in Ontario, both for research and practice purposes;
>
> 2. to assist in tracking abused children, their families and suspected abusers so that protection efforts may continue uninterrupted;
>
> 3. to monitor child abuse case management and programs of the Children's Aid Societies.
>
> Some social workers report that notification of registration may underline the seriousness of their actions to alleged abusers, and act as a deterrent.

Reports of suspected child abuse are made by professionals and individuals to 51 local Children's Aid Societies. These agencies must conduct an immediate investigation. If satisfied that the abuse has been "verified", the local CAS is required to make a report to the central Register, which is located in Toronto. Reports identify the abused child and the alleged abuser, and provide a summary of information about the case. The local CASs are required to submit an updated report on the case within four months of the original report, and annually thereafter until the case is closed by the society. While the Register staff ensure that the forms sent in are fully completed by the local agencies, they have no obligation or right to question the accuracy of the information contained. Reporting of abuse "verified" in this fashion is sufficient for registration.

The process of "verification" of abuse by local CASs is separate from any child protection proceedings in Provincial Court (Family Division) which may be going on in connection with a case, though invariably the same CAS Workers and Supervisor will be involved in making decisions about court proceedings and reporting to the Register. The question of a criminal prosecution of an alleged abuser is also separate from the registration process; such prosecutions are handled by police and Crown Attorneys, often acting in consultation with the local CAS. It is not necessary that there be a conviction or even criminal charges for the name of an individual to be placed on the Register as an abuser. An individual's name is not removed merely because of an acquittal in a criminal case. In 1986, 49 percent of the registered abusers were reported to have been charged with a criminal offence. It was not possible to learn the proportion of registrants who were convicted in criminal proceedings, but, in a substantial number of cases, charges were withdrawn prior to trial or resulted in an acquittal after a full trial.[8]

It must be appreciated that the laws which have governed criminal prosecutions often make it very difficult to obtain convictions in child abuse cases. Often a young child is not considered competent to testify in a criminal case, and concerns about the trauma of the court process on the child have often made the authorities reluctant to prosecute. As a result, the absence of a conviction or prosecution does not necessarily mean that abuse has not in fact occurred, but only that the high standard of proof for a criminal case was not met or that criminal prosecution was not considered appropriate.

Legislation specifies that the Register is confidential, with disclosure of information to unauthorized persons prohibited. Access to the Register is primarly restricted to those involved in investigating or treating situations of child abuse. Children's Aid Society employees are the main users of the Register; a CAS receiving a report of abuse from the community is obliged to consult the Register within three days to ascertain whether the child or alleged abuser has previously been listed. The CAS may share information from the Register with certain individuals involved in providing counselling or treatment to a child or abuser, and such individuals may in theory also have direct access to the Register. In addition to CAS and Ministry employees, the *C.F.S.A.* allows access to a coroner conducting an inquest and to representatives of the Office of the Official Guardian (i.e., a lawyer involved in providing legal representation for a child in a protection proceeding or other legal forum). A registered abuser or child may inspect the Register for

information relating to themselves, or may have a lawyer or other agent inspect the Register for them. With appropriate approval from the Ministry, a researcher may have access to the Register, but under no circumstances may a researcher communicate any information that has the effect of identifying a person named on the Register. The *C.F.S.A.* does not authorize CASs or anyone else to have access to the Register for purposes of screening potential employees, volunteers or caregivers for a history of abusing children.

Table 1 shows the figures for reports to the Register. The total number of reported cases more than tripled between 1980 and 1986.

**TABLE 1: ABUSE REPORTS, BY YEAR***

| YEAR | NO. OF CHILDREN | CHILD ABUSE DEATHS | NO. OF ABUSERS |
|---|---|---|---|
| 1979* | 322 | 2 | 334 |
| 1980 | 686 | 5 | 730 |
| 1981 | 601 | 1 | 640 |
| 1982 | 681 | 1 | 741 |
| 1983 | 1,150 | 11 | 1,276 |
| 1984 | 1,541 | 13 | 1,661 |
| 1985 | 2,042 | 6 | 2,211 |
| 1986 | 2,152 | 9 | 2,314 |
| Total | 9,175 | 48 | 9,907 |

* June 15 to December 31, 1979, only.

Generally speaking, information contained in the Register is not directly admissible in any court proceeding, although a CAS may use witnesses or other direct evidence derived from use of the Register in court proceedings.

Individuals whose names are placed on the Register as abusers receive notice of the fact of registration and of their rights under the legislation. Such notice is usually given by registered mail, but sometimes it is delivered in person by a CAS worker. The Ministry *Guidelines (1981)* provide that when a CAS has decided to register a person, the person should normally be orally informed of the intention to do so prior to actual registration.

Individuals whose names are placed on the Register have the right to seek "expunction" of the information, that is, removal of their names. A request for expunction may result in a CAS reviewing its records and voluntarily requesting that a name be removed. If this does not occur, an expunction hearing may be held before a "Hearing Officer". Expunction hearings are less formal than court proceedings, and the ordinary rules of evidence applicable in the courts do not apply. None of the three present Hearing Officers is a lawyer. They are individuals with experience in the social services field who are retained on a per diem basis to conduct expunction hearings. However, the proceedings are formal and important

enough that the parties are usually represented by lawyers. While many hearings are resolved in half a day, some have lasted for two or three days.

At an expunction hearing the onus is on the CAS to establish that it had sufficient grounds to "verify" that abuse occurred in the manner reported, but it need only satisfy the Hearing Officer that there is "credible evidence" to support its decision to register. This standard of proof is significantly lower than that applicable in ordinary civil or criminal proceedings; as mentioned, even if a person reported to have abused a child is acquitted in a criminal prosecution, this may not result in removal from the Register.

There is a right of appeal to the Ontario Divisional Court from the decision of a Hearing Officer regarding expunction. In *Ridley v. CAS of Belleville*, one of the very few cases in which an appeal was launched, Justice Robins wrote:

> Having regard to the purpose and object of the registry and the social policy underlying the Act, the burden of proof, in my view, should not be too onerous. In establishing a central child abuse register and providing for notice and expungement proceedings, the legislature sought, on the one hand, to protect the civil rights of individuals named and, on the other, to protect and safeguard children in the province from abuse. The nature of the information entered is limited and is confidential save as specifically provided in the Act. It is recognized that the register is an important monitoring device and provides invaluable assistance to those responsible for dealing with the difficult and highly emotional problems relating to child abuse. **To permit the register to achieve its purposes, entries should not be limited to cases in which abuse has been established by the standards of proof applicable to criminal or civil actions.** In my view, the interests concerned and the public interest will be served if the burden of proof . . . **is satisfied by credible evidence supporting the information in the register.** If credible evidence is adduced it remains . . . to determine in light of the circumstances of the request . . . whether the information should remain in the register. In the absence of credible evidence the name must be expunged.[9] [emphasis added]

Despite the fact that the standard of proof for expunction hearings is low, there has been a gradual increase in the number of requests for expunction proportionate to the number of registrations. Since 1983, the proportion of expunctions has been between 4 and 5 percent of the registrations. In 1986, there were 127 requests, resulting in 26 name removals without a hearing, and 12 hearings which resulted in 4 expunctions; the balance of cases are pending or were discontinued.

A much fuller description of the present Ontario Register is provided in Chapter III of this report.

## ISSUES

There are a number of contentious issues surrounding the present Ontario Child Abuse Register. The most fundamental is whether the Register should continue to exist. Most of the advocates for disbandment are professionals in the child welfare system who believe that the Register is bureaucratic, inefficient and of very limited utility in dealing with child protection, mainly because of the lack of consistency in reporting and the fact that relatively few abusers move from the jurisdication of one CAS to another. They argue that local CASs devote considerable resources[10] to sending information to the Register and defending expunction requests, and get very little in return. Another argument in favour of disbandment comes from a different perspective, that of the civil liberties advocate. The Register has been viewed by some as an intrusive, state-run agency which disseminates highly sensitive information of questionable reliability. It has been argued that individuals should not be socially labelled "abusers" without a fair hearing and opportunity to defend themselves.

While a relatively small but articulate group has argued in favour of disbandment, others are seeking to have the operations of the Register expanded so that it can be used to screen those who wish to work with or care for children. There are individuals with a history of abusing children who continue to be recruited for positions of trust and responsibility for children. While there are relatively few individuals who exploit these positions, each may have an opportunity to abuse a large number of children. It is argued that if a state agency has knowledge of an individual's history of abuse, that information should in some way be shared with those who recruit individuals to care for children.

Assuming that a Register is retained, there are questions regarding whose names are registered. What should be the definition of "abuse" which results in a name being placed on the list? How much certainty must there be before a child is identified as abused, i.e. is "credible evidence" enough? Should there be any restrictions on identifying minors as abusers? Children as young as ten have been placed on the Ontario Register as abusers. Should all abusers of children be listed on the Register, or only those who have a particular relationship with a child? At present, names should only be placed on the Register if abuse occurs as a result of the acts or omissions of a person "having charge of a child". How long should names be kept on the Register? They now remain on for 25 years, unless removed by the expunction process.

The expunction process is also controversial. There is disagreement about whether the hearings should continue to be informal, or whether they should be governed by the rules of procedure and evidence which apply in courts, and perhaps be conducted by a judge. Should Hearing Officers be legally trained? Should it be possible for individuals to have their names removed it they can demonstrate that they are unlikely to commit further acts of abuse?

The operation of the Register has also come under scrutiny. Some have criticized the Register for being too slow in responding to inquiries and have suggested that not enough information is being given out to professionals. There is

also a concern that not enough work is being done in analyzing and disseminating data about child abuse based on reports made to the Register. Finally, there are questions about the extent to which an Ontario Register should be involved in exchanging information with out-of-province agencies or listing abuse cases which occurred outside of the province.

## PRIOR STUDIES

The Ministry of Community and Social Services has been aware of the controversy and has sponsored a number of studies since the Register began operating in 1979.

In 1982, Jeffrey Reitz of the University of Toronto was commissioned to conduct a review of the literature pertaining to child abuse registers, with a number of objectives, including "providing the Ministry with a well-reasoned position on the merits, if any, of continuing, modifying, or expanding its present register".[11] Reitz prepared a well-researched document, and we have made use of his material. However, his report contained no specific recommendations for the Ontario Register, as the author found insufficient published information to support any definite conclusions. The report focussed on comparing experiences with registers in Ontario and other jurisdictions, and indicating the major considerations to be taken into account in planning and decision-making.

In 1982, Judge H. Ward Allen released his four volume report into the 1976 death of a young child as a result of child abuse; the report was the product of a judicial inquiry ordered by the Ministry of Community and Social Services. This report made many recommendations about the management of child abuse cases, including a number in connection with the Register. He envisaged a much expanded Register which could receive reports "at all times and from all sources," and would have a responsibility for ensuring that individual child abuse cases were properly handled by local CASs. The judge also recommended that all abuse cases should be reported, regardless of the relationship of the person committing the abusive acts to the child.[12]

The Ministry did not adopt any of Judge Allen's recommendations in regard to the Register, though many other recommendations in his report were implemented. While many aspects of the child welfare system were altered by the *Child and Family Services Act*, which came into force November 1, 1985, the provisions directly governing the Register were not changed significantly.

In 1984-85, the Ministry requested that the Ontario Centre for Prevention of Child Abuse review the legislative provisions governing the Register.[13] An Ad Hoc Committee was struck and chaired by Ross Dawson, Executive Director of the Oxford County CAS. The Committee recommended the retention of the Register with the present 25 year time period for keeping names on the Register, and that "more discussion and thought" be given to the question of using the Register for screening. The Ad Hoc Committee favoured listing abusers under the age of 18 on the Register, with a discretion whether to identify abusers under 12. The Com-

mittee also recommended that a broad approach be taken to the concept of "having charge of a child"; that is, the closeness of the relationship between an abuser and a child should not be an important factor in deciding whether to list a case on the Register.

In the autumn of 1985, Barry Napier, a lawyer, was retained by the Ministry to make recommendations concerning the development of a Procedural Code for Expunction Hearings. Napier prepared a paper which discussed the history, purposes and functioning of the Register. He noted that the Register was being used by CASs for screening of volunteers, employees, foster parents and prospective adoptive parents, though he argued that this practice was not intended by the legislation and was perhaps illegal.[14] Napier did not make definite proposals for a procedural code for expunction hearings, but he did conclude:

> The present Ontario Child Abuse Register is a confused compromise between incompatible goals. At the same time, it represents both an inadequate response to these goals and a serious source of prejudice to a person so unfortunate as to be registered on it. No amount of further tinkering, compromise, or balancing of the various goals one against the others and all against the rights and interests of the registered person will improve the situation. If the various goals for a register are valid, worthwhile and attainable--they are--and if the adequate protection of the rights and interests of potential registered persons is a valid and serious overarching concern--as it surely must be--the answer, it is submitted, is to adopt the "sub-register" model outlined below . . . .[15]

In an appendix to his report, Napier offered suggestions for a possible "sub-register model," with discrete registers being maintained for different purposes, each with different standards for placement of names and access. A variation of this proposal is recommended in Chapter V of our report.

## ONTARIO CHILD ABUSE REGISTER REVIEW

In November of 1986, the Ministry circulated an invitation to tender proposals for conducting a Review of the Ontario Child Abuse Register. The specified objectives were:

1. To clarify the purpose of the Child Abuse Register.

2. To determine if the requirements governing the operation of the Register are appropriate, specifically through the examination of the legislation, regulations and procedures under which the Register operates.

3. To determine if the operating procedures of the Register adequately protect the civil rights of individuals and if not, what changes would be required.

4. To determine if the Register's use should be extended to provide routine checks for potential employees or volunteers

of child-serving organizations and if so, what changes must be made in the reporting procedures and structures.

5. To determine what issues exist around consistency of reporting to the Register and effective ways of dealing with these issues.

6. To determine if the Register is an effective tool in the protection of children and prevention of child abuse especially with respect to repeat abusers.

7. To determine if the data collected through the Register are accurate, beneficial and being used appropriately. If not, whether some type of statistical record-keeping concerning abuse should be developed and maintained and the best applications of this data.

8. To recommend if the Register should be retained or disbanded and if disbanded, what are the viable alternatives to protect children from abuse while still respecting the civil rights of individuals.

In January 1987, the Ministry contracted with the Social Program Evaluation Group at Queen's University to conduct the review. The Research Team conducted extensive personal and telephone interviews with individuals around the province, received responses to questionnaires from hundreds of professionals, and through letters and newspaper advertisements solicited views about the Register from groups and individuals.

## OUTLINE OF THE REPORT

Chapter II presents a review of some of the literature on registers and a description of the operation of registers in other jurisdictions, and analyzes some of the implications of the experience of other jurisdictions for Ontario. Chapter III provides a study of how the Ontario Register presently functions, as well as a report on the views, experiences and perceptions of those involved with the Register. This chapter also provides a description of our methodology for surveying various groups for their opinions and experiences.

Chapter IV assesses the operation of the present Register. It is concluded that while the ideas behind the Register were well intentioned, it has proven to be largely ineffective, inefficient and subject to misuse, and represents a significant threat to civil liberties by inappropriately labelling individuals as "child abusers" without a proper method of confirmation. A strong case can be made for total disbandment, and the implications of disbandment are considered in Chapter IV as well.

Chapter V provides recommendations for the establishment of a more limited, focussed register system. It is recommended that a Register of Child Abusers be established, with abusers' names listed only if there is due process and appropriate

confirmation of abuse, either through a judicial process or an admission. It is also proposed that a Child Abuse Research Register of non-identifying information about child abuse cases be established in order to facilitate research, planning and case management. Various other types of "sub-registers" are considered, including a Register of Children at Risk of Abuse and a Register of Suspected Abusers, but none of these is recommended.

## FOOTNOTES

1. *The Child Welfare Act*, S.O. 1965, c. 24, s.41.

2. Greenland (1973), pp. 27-31.

3. Ontario Ministry of Community and Social Services, Committee on Child Abuse, *Proposal with Regard to Central Child Abuse Registry*, (G. McLellan; Chairman, H. Sohn, Secretary), 1977.

4. S.O. 1978, C. 85, s. 52.

5. S.O. 1984, C. 55, ss. 71 & 72.

6. Ontario Ministry of Community and Social Services, *Guidelines for Reporting to the Register* (1981)

7. Ontario Ministry of Community and Social Services, *The Child Abuse Register: Guidelines for Expunctions* (1982).

8. In theory it should be possible to learn from Register data (Form 2) the number of charges which resulted in convictions. However, this information is frequently not given by CASs, and Register staff were not available to provide meaningful aggregate data on the percentage of registered persons convicted.

9. Unreported decision, digested at (1981), 8 A.C.W.S.(2d) 296 (Ontario Divisional Court).

10. The Ontario Register is not administered as a separate entity, so it is not possible to ascertain the financial costs of having a register. For 1987-88, the Ministry has budgeted $135,417 for salaries for Register staff, $40,000 for conducting expunction hearings, and $8,800 for supplies, for a total of $184,217. This figure does not include management staff, capital costs (i.e., computer, office equipment), space costs or Ministry supervisory costs. Most significantly, in terms of assessing true operating costs, it does not include costs borne by CASs for assessing cases and reporting to the Register, and for defending expunction requests. Many of those seeking expunction are represented by lawyers paid by Ontario Legal Aid. Depending upon one's assumptions, the total annual cost for having the Register in Ontario probably is in the neighbourhood of $500,000 to $1,000,000 a year.

11. Reitz (1984), p. v.

12. Allen (1982), Recommendation 87, Volume 4, p. 1476.

13. *Preliminary Report to Policy Management Committee Ministry of Community and Social Services, From the Ad Hoc Committee on the Child Abuse Register* (February, 1985.)

14. Napier (1985), pp. 15-30, 55-57. After Napier's report was received, the use of the Register for screening purposes virtually ceased. The history of the Register for screening is more fully discussed in Chapter III.

15. Napier (1985), p. 74.

## CHAPTER II: REGISTERS IN OTHER JURISTICTIONS: LEGISLATION, LITIGATION AND LITERATURE

### INTRODUCTION:

There are enormous variations in how different jurisdictions deal with child abuse registers. Some have sophisticated, computerized, jurisdiction-wide registers which are governed by quite complex and complete legislation. Other jurisdictions have less formal and sophisticated operations, and a few North American jurisdictions have no registers at all.

There are undoubtedly valuable lessons to be learned by studying the experiences of other jurisdictions with registers, but a few cautionary notes must be sounded. One is that while there is a significant amount of descriptive material available about how different registers operate, there is only a small body of literature which analyzes their functioning. There are no published studies which reliably report on the effectiveness of registers in meeting their stated objectives.

It is apparent that registers in different jurisdictions have different objectives, and take quite different forms. At least in part the nature of a register can be related to an overall structure for delivery of child welfare services, as well as to geographical and financial constraints.

In this chapter we will consider the experience with registers in three countries--the United States, Britain, and Canada. In conducting this Review, we wrote to child welfare authorities in all Canadian jurisdictions, and attempted to contact authorities in all fifty American states. We received information from almost every territory and province in Canada, and about half the American states.

We believe that the information contained in Chapter II is important. It gives a historical and comparative view of the developments and current controversy in Ontario. This chapter reviews some of the leading court cases from other jurisdictions which deal with child abuse registers; these cases shed light on issues which may arise under the *Charter of Rights* in connection with the Ontario Register. Finally, consideration of the experience of other jurisdications with registers provides a valuable source of ideas for improving our own system.

### THE UNITED STATES

#### History and Background

The concept of the jurisdiction-wide child abuse register was first developed in the United States in the 1960s and quickly spread to Canada. While it seems clear that some of the original reasons for having a register have proven unfounded, registers continue to have broad professional support and operate in some form in almost every state. Although some states have registers which are the subject of detailed legislation, in most American jurisdictions legislation simply authorizes the establishment of a child abuse register, with operating rules and procedures left to administrative officials.

The original proponents of registers were physicians and social workers who felt that they could serve as a useful tool for the diagnosis of child abuse and could facilitate research. In particular, there was a recognition that the identification of child abuse is often based on circumstantial evidence; the fitting of one incident into a broader pattern might be vital for identification. This is especially true of physical abuse, which in the 1960s was the primary focus of professional attention. There was a concern about "hospital-shopping", a parental practice of taking a child to different hospitals for treatment, making it unlikely that a doctor would recognize a pattern indicating abuse. The first registers were established in 1964 in Denver, Los Angeles and New York City, as a result of the administrative action of medical and social service groups. By 1966 four American states had legislation mandating the establishment of jurisdiction-wide registers.[1]

One of the leading American chroniclers of the child abuse registers described this early period of development in the following terms:

> The idea for a central register of child abuse reports apparently grew from two disparate conceptual and professional frameworks. One was the medical conception of a register to assist in diagnosing suspicious injuries. The other was the social science conception of a register to assist in understanding the problem of child abuse by providing statistical data. But the exact origins of the idea are unclear. None of the usual ways in which a major new idea is developed, announced, and promoted provided the impetus for the rapid adoptions of central registers. No single or outstanding research finding, publication, or national group introduced the concept or can be credited with its success--if rapid adoption by states is a measure of success. None of the early model child abuse reporting laws contained any reference to central registers for reports of child abuse
>
> . . . .
>
> As a result of this obscure history, central registers and their purposes, functions, and procedures never have been fully presented for public and professional examination.[2]

In 1977, the National Center on Child Abuse and Neglect developed a *Draft Model Child Protection Act* which provided support for a centralized register, with one section stipulating:

> S. 21(C) There shall be a central register of child protection cases maintained in the statewide center. Through the recording of initial, preliminary, progress, and final reports, the central register shall be operated in such a manner as to enable the center to: (1) immediately identify and locate prior reports or cases of known or suspected child abuse or maltreatment in order to assist in the diagnosis of suspicious circumstances and the evaluation of needs of the child and family; (2) determine the current status of all child protective cases in order to continuously monitor and evaluate the provision of child protective and treatment services in individual cases; and (3) regularly develop statistical and other information and analysis in order to measure the effectiveness of existing laws and programs and to facilitate research, planning and program development.[3]

After the *Draft Model Act* was prepared, a seminal article by Besharov provided support for an "upgraded register" with a mandate to:

1. Facilitate management planning by providing statistical data on the characteristics of reported cases and their handling;

2. Assist assessments of danger to children by providing or locating information on prior reports and prior treatments efforts;

3. Encourage reporting of known and suspected child abuse and neglect by providing a convenient hotline for reporting, by providing a focus for public and professional education campaigns, and by providing convenient consultation to caseworkers and potential reporters; and

4. Sharpen child protective accountability by monitoring follow-up reports.[4]

Besharov recognized the limited utility of registers then in existence, noting "no state can point to more than a handful of instances in which a professional requested the register's assistance to diagnose suspicious circumstances; most states cannot point to a single instance".[5] However, he concluded by recommending the establishment of state-wide registers, while pointing out that a poorly organized or inadequately supported register may be worse than useless.

> The central register is an attractive technological solution to a complex social problem. But its potential is quickly exaggerated and its utility easily compromised. It is far easier to imagine and plan twenty-first century devices than it is to make the hard decisions necessary to improve child protective services.
>
> As a special committee of the American Academy of Pediatrics described: 'In general, communities and states lacking registries would like to have them; but those that have them are dissatisfied.'
>
> Nothing is so striking as the failure of almost all existing central register systems to fulfill their stated statistical, diagnostic, and case monitoring functions.
>
> Nothing is more disappointing than to visit a much heralded central register only to find it hopelessly overwhelmed by a flood of cases that staff hardly has time to record and file--let alone monitor. Unprepared for the veritable avalanche of paper work caused by an upgraded reporting law and register--having insufficient professional and clerical staff, too few phone lines to enable callers to reach the register by the second or third try, and too little space in which to store the reports that are received--these registers are immobilized from the day they open.
>
> The failure to realize the diagnostic potential of central registers is not necessarily because the theory is wrong, for it has never been adequately tested. Perhaps the concept of a central register to which protective workers, police, and concerned physicians can turn for diagnostic aid is neither necessary nor feasible. Whether the dangers of giving them ac-

cess to registers outweighs the dangers of not doing so is a judgment individual states must make.

But there can be no doubt that an effective register could help child protective agencies save the lives of some children--nationally, perhaps as many as a few hundred each year--and stop the suffering of many more by aiding case assessment and agency planning and monitoring. Registers have not been used effectively because of widespread and legitimate wariness of personal data banks, because of ambivalence about the underlying theory of diagnostic need, but most importantly, because of administrative failure to organize registers properly. . . .

However, just as a central register can be used to upgrade a child protective system, so too can it be abused--through misuse or disuse. In many states, the existing register appears to be an unused and ignored appendage to the child protective system whose purpose no one can describe. Many of the functions assigned to central registers have been criticized as not worth the financial expense and possible compromise of civil liberties involved. Sometimes the attention paid to a register reflects a desire to give the appearance of improving services without making the commitment (and spending the really large amounts of money) necessary to do so. The mere establishment of a central register system, even the most elaborate and promising of systems, is not the end of the process of improving child protective services--it is hardly the beginning. It would be a cruel hoax if states were to exploit a register to give the appearance of improving services without making the institutional and financial commitment necessary to truly do so.[6]

The *Draft Model Act* and Besharov's advocacy efforts lent support to the expansion of centralized child abuse registers in the United States. There was an increase in both the number of states having registers and in the sophistication of individual registers. In many states, the centralized child abuse register is operated in conjunction with state-wide toll free telephone lines which receive reports from professionals and citizens about suspected cases of child abuse; in these states, local agencies are assigned by the central register with responsibility for investigation and verification of cases.

**TABLE 2: GROWTH OF CENTRAL REGISTRIES IN THE UNITED STATES, 1966-1986**[7]

| YEAR | NO. OF STATE REGISTERS | NO. OF STATE REGISTERS ESTABLISHED BY STATUTE |
|---|---|---|
| 1966 | 4 | 4 |
| 1970 | 44 | 19 |
| 1978 | 46 | 39 |
| 1986 | 49 | 43 |

A significant new development in the United States in the 1980s has been the use of registers for screening applicants for positions of trust with children, such

as day-care workers, foster parents, teachers and licensed group home operators. At least 32 American states are now making use of registers for screening purposes.[8]

The dominant trend in the United States has clearly been towards the establishment and expansion of registers. However, in 1975 Minnesota stopped having reports containing identifying information sent to a central register. This action was apparently largely a result of concerns over civil liberties issues.[9] Minnesota does, however, maintain county abuse registers and requires local agencies to provide detailed non-identifying reports for each abuse case; these reports are sent to a central register for research and program planning.[10] It is interesting to note that while there is no longer concern in Minnesota over expungement or correction of centralized registry records, there is a formal adversarial process for correction of the local agency records containing information about abuse.[11]

A number of American jurisdictions are presently reviewing their registers, and correspondence from the state of Washington indicates an effort to alter or eliminate the register in that state.[12]

In the following sections more detailed consideration will be given to aspects of the American child abuse register system which are of most relevance to the current Ontario Review.

## Categories of Cases: "Founded", "Indicated", "Undetermined" and "Unfounded"

As noted in Chapter I, the Ontario Register contains a record of all abuse cases which have been "verified". The process of verification involves an assessment by the local Children's Aid Society of whether abuse has occurred. Registration does not require any external validation or court proceedings, though an individual identified as an abuser may seek expunction, and a name may be removed if there is no "credible evidence" of abuse. The Ontario system is essentially based on a categorization of cases as "verified", i.e., there was abuse, or "unverified", i.e., there was no abuse. This relatively simplistic categorization scheme may not adequately reflect a reality in which the decision about whether abuse occurred depends upon a consideration of circumstantial evidence and an assessment of the credibility of different individuals. The reality of the assessment of whether child abuse occurred may be based more on probabilities than on a definite conclusion. Some American states have classification schemes which attempt to more fully capture this reality.

In Illinois, all reports in the central register are classified as "unfounded", "indicated", and "undetermined", with the following definitions:[13]

> An **unfounded report** means any report made under this Act for which it is determined after an investigation that no credible evidence of abuse or neglect exists.

An **indicated report** means a report made under this Act if an investigation determines that credible evidence of the alleged abuse or neglect exists.

An **undetermined report** means any report made under this Act in which it was not possible to initiate or complete an investigation on the basis of information provided to the Department.

A report made to the register may remain "undetermined" during an investigative period of up to 90 days; if credible evidence to support a finding of abuse is not discovered in that time, the report is deemed "unfounded". Normally, when a report is "unfounded" identifying data are deleted from the register, rendering it useful only for research purposes. All information sent out by the Illinois register must prominently state whether the report is "indicated" or "undetermined".

In Pennsylvania, reports on the register are classified as:[14]

**Founded Report** means a report made pursuant to this Act if there has been any judicial adjudication based on a finding that a child who is a subject of the report has been abused.

**Indicated Report** means a report made pursuant to this Act if an investigation by the Child Protective Service determines that substantial evidence of the alleged abuse exists based on (i) available medical evidence, (ii) the Child Protective Service investigation or (iii) an admission of the acts of abuse by the child's parent or person responsible for the child's welfare.

**Under Investigation** means a report pursuant to this Act which is being investigated to determine whether it is 'Founded,' 'Indicated,' or 'Unfounded.'

**Unfounded Report** means any report made pursuant to this Act unless the report is a 'Founded Report' or unless an investigation by the appropriate Child Protective Service determines that the report is an 'Indicated Report.'

If an "under investigation" report is not considered "indicated" or court proceedings are not commenced within 60 days, the report is deemed "unfounded". For "unfounded" reports, identifying information must be deleted within 12 months. For "founded" or "indicated" reports identifying information is kept at least until the child involved reaches the age of 18. Special obligations are placed on public sector employers if employees are the subject of "founded" or "indicated" reports of abuse.

## Research

One of the principal stated reasons for having a register is that it facilitates research into the phenomenon of child abuse. As will be more fully discussed in Chapter III, one of the disturbing aspects of the Ontario Register is that virtually no

research of any nature has been done using its data; indeed, even annual reports on the total levels of abuse in the province have not been regularly made available.

As a result of our correspondence, we learned that many American states use their registers to produce sophisticated and useful annual reports on child abuse. These reports give a reader a good understanding of the nature and dimensions of the problem in the state.

For example, we received a 26 page bound soft-covered publication from the Illinois Department of Children and Family Services, entitled *Child Abuse and Neglect Statistics: Annual Report - 1985*, which included tables, charts, maps and explanatory text. It provided detailed information about sources of calls to its state-wide reporting "Child Abuse Hotline", the outcomes of investigations, the characteristics of abused children, and information about perpetrators, including their age, race and relationship to victims. The publication also gives a general description of the child protection system in Illinois, including a section on "Accomplishments in Fiscal Year 1985".

Minnesota, which has a register that collects only non-identifying information, sent a similar 33 page publication entitled *Child Maltreatment in Minnesota 1982-84*. This publication reported on a three-year period, including characteristics of abused children, with the rates of different counties indicated on a map, characteristics of perpetrators and the source of reports. The publication also offered a description of the child protection system in the state.

## Screening

An increasingly common use of child abuse registers in the U.S.A. is for the screening of those who are in positions of responsibility for children. As noted above, at least 32 states now make at least some use of their registers for this purpose. Most commonly the screening relates to foster and adoptive parents, public employees and those who require a state license to operate a facility, like a day-care centre. In most states the fact that a person's name is on a register does not automatically preclude occupying a position of responsibility for the care of a child, but typically there must be a thorough investigation before such a person is given this responsibility.

New York has a quite elaborate legislative scheme[15] governing its register, with information kept about abuse reports which are "under investigation" or "indicated" on the basis of "credible evidence". In 1980, a provision was added to the law requiring checking of prospective foster and adoptive parents, and operators and workers in specified government funded or operated agencies who had "child-caring responsibilities". Individuals applying for these positions are to be informed that a check will be done. In 1982, there were 17,731 requests for screening, with approximately 1.8 percent resulting in a report of "indicated abuse".[16] If an applicant is denied because a report of a prior registration is received, the individual is entitled to a hearing before a commissioner. At the hearing, there is an onus on the Department of Social Services to establish on a "fair

preponderance of evidence" (i.e., the civil standard of proof) that abuse or maltreatment occurred. If this is done, the applicant may establish by a "preponderence of evidence" that he or she "has been rehabilitated so that the health, safety and welfare of a child will not be endangered if such person's application ... is approved". If the abuse is not established, or rehabilitation is established, the applicant is to be approved for the job. In 1985, the list of individuals for whom screening checks were to be carried out was increased to include those who are "actively being considered for employment and who will have the potential for regular and substantial contact with children" in a range of situations such as camps and day-care centres.

One state with a particularly extensive screening program for those who work with children is Florida. The legislative scheme was put into place in 1985 as a result of a major investigation into incidents of physical and sexual abuse in day-care centres.[17] There is mandatory screening against the child abuse register for all of those who operate or are employed in any facility for the care of children, including day-care centres, foster homes and summer camps. Volunteers who work less than 40 hours a month and are under "direct and constant supervision" need not be screened. The screening process includes fingerprinting of adults and a check of juvenile court records; juvenile records relating to offences involving incidents of abuse are not to be destroyed but are kept for later record checks. A person who has been convicted of an offence involving serious acts of violence or child abuse is absolutely precluded from being an employee, volunteer or operator in a position of trust in regard to children. A person whose name appears on the register for a "substantiated indicated report" of abuse may be excluded, but has a right to an independent inquiry at which evidence of "good character and rehabilitiation" may be adduced. "Substantiated indicated abuse" requires some kind of judicial or quasi-judicial determination, but does not require a criminal conviction.[18] Screening is done with the consent of an applicant or employee, but if such consent is not forthcoming, the person is denied the position. It is our information that the result of this screening process is to substantially deter those who have a confirmed history of abuse from seeking or continuing to work in positions of trust with children in Florida; only a very small percentage of those screened reveal a confirmed history of abuse. It has been suggested to us that a number of individuals with a history of abuse left their positions prior to the time that the screening process for employees was carried on in 1985.[19]

The Congress of the United States has also enacted legislation to encourage the states to conduct nation-wide criminal record checks for all operators, staff and employees of child-care facilities, which includes juvenile treatment and corrections facilities, as well "any facility or program having primary custody of children for 20 hours or more per week". Since October 1, 1985, any state not having a criminal record check policy in operation has lost significant funding for training programs for child-care workers.[20] The stated objective of this law is "protecting the children involved and promoting such children's safety and welfare while receiving service". The practical effect of this law is to require every present and prospective employee in every child-care program in participating states to have a criminal record check, which in turn requires each person to be fingerprinted, since American nation-wide criminal records are accessed through fingerprints.

The federal law does not preclude employers from hiring individuals with criminal records to care for children. However, it does give employers knowledge of a confirmed history of abuse or violence. Further, in the United States there is potential civil liability to an agency for injury caused to a child by an employee or volunteer with a known history of abuse, and it thus seems likely such individuals will generally not be placed in a position of responsibility in regard to children.[21]

In the United States, proposed model legislation put forward by a working group of the National Association of Attorneys General and the American Bar Association would allow "criminal history information" related to sex offenses to be given out concerning employees "who regularly render services to children, including, but not limited, to care, treatment, transportation, instruction, companionship, entertainment or custody". Employees would have to consent and provide fingerprints. If an individual was convicted of one sex offence, has a sex offence charge pending, or was charged on two or more previous occasions, the criminal "history" would include not only convictions, but also charges pending and acquittals.[22]

**Expunction Proceedings**

Most states have a procedure under which an individual identified on a register as an abuser can seek to have information on the register amended or expunged (removed). The procedure invariably involves an initial request to the officials who operate the register. If this request is denied, there is a right to a hearing before an independent decision-maker. The hearing is not conducted in a court, but by an "administrative tribunal" with one or more members.

Since expunction hearings are not conducted in court, there is usually some relaxation of the ordinary rules of evidence and procedure. In some states, legislation specifies that there is a time limit for seeking expunction. In Illinois, it is 60 days from receipt of notice of registration.[23] However, in some other states, like Florida and Pennsylvania, an application for expunction may apparently be made at any time.

While initial expunction proceedings are conducted by administrative tribunals, there is always some scope for appeal to the courts.

At expunction hearings in the United States the onus is on the child protection authorities to establish that registration is justified. In many states this does not require that abuse be established according to the ordinary civil standard of proof, in the U.S.A. described as proof on the "preponderance of evidence" or "balance of probabilities". That is, it is not necessary to establish that it is more likely than not that abuse occurred; the standard is lower than that ordinarily applied in civil proceedings. It is sufficient for the child protection authorities to produce "credible evidence" or establish "probable cause" to believe that a person committed the acts recorded on the register.[24]

In Pennsylvania, however, there is a higher standard applied in expunction proceedings, that of "substantial evidence", which was defined in *Re Northampton's Children and Youth Services Division and Commonwealth:*

> Evidence is substantial where it so preponderates in favor of a conclusion that it outweighs in the mind of the factfinder, any inconsistent evidence and reasonable inferences drawn therefrom.[25]

As discussed above, when employment prospects are directly affected by registration, most states provide a right to a hearing with a determination made according to the ordinary civil standard of proof.

**Constitutional Issues in the U.S.A.**

There are a number of American court decisions dealing with the constitutionality of registers which are of interest to Canadians. The 14th Amendment to the American Constitution guarantees:

> No State shall . . . deprive any person of life, liberty or property, without due process of law. . . .

In Canada, s.7 of the *Charter of Rights and Freedoms* provides:

> Everyone has the right to life, liberty and security of the person and the right not be deprived thereof except in accordance with the principles of fundamental justice.

While the words of these two provisions are different, and Canadian courts are clearly not bound by American decisions, it is instructive to consider the American experience when attempting to predict how Canadian courts will deal with the constitutionality of registers.

A threshold question in constitutional litigation is whether a "protected interest" is affected. In the United States, the courts have consistently recognized that even a confidential register may infringe on individuals "liberty interest". In *Bohn v. County of Dakota*, the United States Court of Appeals considered the interests effected by a register which was private, except for access by investigating and prosecuting authorities.

> . . . . the Bohns have a protectible interest in their reputations at stake in this case. By identifying the Bohns as child abusers, investigating the quality of their family life, and maintaining data on them, the County Department exposed them to public opprobrium and may have damaged their standing in the community.

> In **Wisconsin v. Constantineau** the Supreme Court held that, where the State attaches "a badge of infamy to the citizen, due process comes into play. . . . Where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and opportunity to be heard are essential."

> . . . . when the County Department found Bohn to be a child abuser, it drove a wedge into this family and threatened its very foundation. The stigma Mr. Bohn suffers as a reported child abuser undoubtedly has eroded the family's solidarity internally and impaired the family's ability to function in the community. In light of these clear adverse effects on familial integrity and stability, we find that Mr. Bohn's reputation is a protectible interest.[26]

Similarly, in *Petition of Bagley*, the Supreme Court of New Hampshire stated:

> At the moment the Division [of Children and Youth Services] entered the record of its investigation in the central register, the Bagleys' lives became a little more complicated and a little less free. . . .
>
> The Division argues that the confidential manner in which it maintains central registry records obviates any danger of stigmatization. There are degrees of confidentiality, however. If the records were intended to remain entirely confidential, there would be no reason to store them. Under its rules the Division may in some circumstances exchange information with other agencies or individuals. . . . In the present case the information in the central registry apparently will prevent Mrs. Bagley from obtaining a daycare license. The Division also fails to take into account the possibility of unauthorized disclosure of central registry records.
>
> Today governments collect great quantities of data about their citizens, data which, when stored in computers, potentially are available to large numbers of people. The dangers presented by governmental possession and use of inaccurate information are greater than ever. The principles of due process are our most effective shield against these dangers. In our zeal to prevent the abuse and neglect of children we ought not to forget them.
>
> We hold that in determining that the report of child neglect was founded, and in entering and maintaining a record of this determination in the central registry, the Division engaged in an official adjudication of status of potentially injurious consequences and thus deprived the Bagleys of their "liberty" within the meaning . . . of the Constitution.[27]

These cases clearly suggest that in a Canadian context, an individual's "liberty and security of person" are affected by registration. If the operation of a register affects constitutionally protected interests, this means that its operation must be in accordance with "due process of law" in the USA, or in accordance with "the principles of fundamental justice" in Canada.

The American courts have consistently held that in assessing whether procedures satisfy the requirements of "due process", it is essential to consider: the nature of the interest affected; the risk of erroneous deprivation of such interest through the procedure used and the probable value of additional procedural safeguards; and the burdens that additional procedural safeguards would entail. It is accepted that greater procedural safeguards are needed if individuals risk imprisonment or loss of custody of a child than if they are merely facing the prospect of having their names placed on a confidential child abuse register. The

courts recognize that the rights of persons suspected of being abusers must be balanced against the interest of the state in protecting children from abuse.

In *Petition of Bagley*, parents were informed over the telephone that their names had been placed on the child abuse register. The New Hampshire Supreme Court stated:

> In the future, when the Division determines that a report of child abuse or neglect is "founded, problem resolved," the Division must provide written notice to the person determined to be the perpetrator of the incident of abuse or neglect. The notice must set forth the nature of the report and the reasons underlying the Division's determination. In addition, the notice should identify the perpetrator as such. Finally, the notice should inform the perpetrator of his right of access to the information stored by the Division, as well as his right to challenge the determination in an administrative hearing. If the determination is upheld after a hearing, the Division must provide the perpetrator with a written statement of the reasons for its decision to uphold.[28]

In coming to this conclusion, the court was influenced by the fact that written notice may be less subject to misinterpretation and can be given without great expense.

It is also clear from American jurisprudence that if individuals are identified on a register as abusers of children, they have a right to a hearing before a decision-maker not involved in the investigation of the case. If the effect of registration is to deprive an individual of employment, or the prospect of employment, it seems that abuse registration must be supported by a clear finding that abuse has occurred; "credible evidence" or "probable cause to believe" that abuse occurred may not suffice if an individual's career prospects are at stake. In *Anderson v. Department of Health and Rehabilitation Services*, a Florida court interpreted legislation which provided that individuals could not work in a child care facility if they were the subject of a "substantiated indicated report of abuse". As a matter of statutory interpretation, the court held that this required more than "some indication" that abuse occurred; it required a judicial finding, on a civil or criminal standard, that the individual had abused a child. The court also commented:

> The statute as so construed comports with constitutional requirements of due process because it fully preserves the right of any potential licensee or employee of a child care facility to have the truthfulness of the allegations of child abuse substantiated at a hearing in which that individual may participate after reasonable notice. On the other hand were we to approve the construction urged by HRS, any indicated report of abuse in its registry would disqualify an individual from employment until that individual carried the burden of disproving the accuracy of the reported abuse. To so shift the burden of proving the negative, i.e., that the alleged act of child abuse did not occur, is contrary to fundamental notions of fairness forming the basis of our system of justice, and we have considerable doubt that such procedure would satisfy the requirements of constitutional due process.[29]

However, it would seem that where the effect of registration does not involve a risk to employment or the opportunity to care for children, the interests involved may merit less constitutional protection. In *Bohn v County of Dakota* the court considered the adequacy of a scheme in which "substantiated" reports of abuse could be kept for seven years for further investigative purposes. Individuals could challenge the "substantiated" report by an administrative review only after registration (*ex post* review). The court found this constitutionally acceptable.

> Although, as we have observed, Mr. and Mrs. Bohn's interest in their family's solidarity and reputation as they relate to the family's vitality is a protectible interest, it is counterbalanced by the children's interest in continued freedom from abuse or neglect. Statutes like this one must attempt to harmonize this polarity of competing interests, and we believe this statute mediates between the two by minimizing the state's interference in family life. Essentially, the state makes a finding (which is treated confidentially), offers supportive social services, and monitors the progress of the family. Under this statute taken alone, the finding is not published, the child is not ordinarily taken from the parents, and the parents are not ordinarily prosecuted. Thus, the statute is designed as a preventative measure to minimize the damage which vulnerable children might suffer from familial conflict. Because the statute effectively mediates between the private interests, we cannot say it is constitutionally defective
>
> . . . .
>
> Moreover, the **ex post** procedures for review are fully adequate to test the veracity of the County Department's finding in that these procedures substantially incorporate truth-testing measures long approved by our legal system. We note that **ex post** procedures have previously been approved by the courts in cases which bear comparison with the case at bar. . . . The government has a strong interest in protecting powerless children who have not attained their age of majority but may be subject to abuse or neglect. To the extent that pre-investigation procedural protections might delay or frustrate the protection of these children, we believe the government's interest might be impaired. In addition, although the pecuniary cost of such additional protection might not be great, to the extent that it would be duplicative of **ex post** procedures . . . whatever cost would be entailed would be wasteful.[30]

In Pennsylvania, the register distinguishes between "founded" reports of abuse, which must be judicially determined, and "indicated reports", which must only be supported by "substantial evidence of alleged abuse". The courts have upheld a process of administrative expunction hearings for "indicated reports" in which alleged abusers may be excluded during testimony by children, and in which the name of the original reporter of abuse is not revealed.[31] It has also been held constitutionally acceptable to base a finding of "indicated" sexual abuse on the statements of a three-year old child related through the testimony of a social worker.[32] This supports the proposition that the ordinary rules of evidence applicable in courts need not apply to expunction hearings.

**Conclusion On American Jurisprudence:**

Though one must be very cautious when applying American constitutional jurisprudence to Canada, a reading of these cases suggests that while registration in Ontario's present Child Abuse Register almost certainly affects "liberty" or "security of the person", a strong argument can be made that the procedures for notification and expunction hearings are in accord with the "principles of fundamental justice", as required by s.7 of the *Charter of Rights*.

**GREAT BRITAIN**

As a result of a 1974 recommendation of the Department of Health and Social Security, child abuse registers have been established in Britain. They operate without legislative mandate and are intended to coordinate diagnostic and treatment services of different professionals and agencies. They operate in conjunction with interagency case conferences. It appears that a range of professionals has access to the registers, and that there is substantial variation in the criteria for placing a child's name on a register. They do not seem to be used for screening, and registration is by names of children, not abuser.

Although registers in Britain have not been evaluated, reports suggest that in some localities they have contributed to a reduction in child abuse. However, it must be appreciated that British registers operate on a local level. In a Canadian context they could be analogized to an index of abuse cases kept by a local C.A.S. and shared with other professionals through the mechanism of a local interagency child abuse team.[33]

**CANADIAN REGISTERS: INTRODUCTION**

While there is significant variation in Canada, most jurisdictions have some form of child abuse register or centralized index of protection cases. Besides Ontario, Manitoba, Nova Scotia and Quebec have registers operating under a legislative mandate. Alberta, British Columbia, Saskatchewan, Newfoundland, Prince Edward Island and the Northwest Territories have centralized indexes which serve some of the same functions as a register, but which operate without specific statutory authorization. New Brunswick has no register or index at present.

There is considerable controversy in Canada over registers. In Manitoba two conflicting reports and constitutional litigation have resulted in a recent legislative initiative for an expanded register. British Columbia abolished its register in 1984, but consideration is now being given to the establishment of some form of register. New Brunswick is also considering introducing a child abuse register.

While relatively little has been written about Canadian registers, in 1984 the Badgley Committee on Sexual Offences Against Children produced a report which included a section on registers. The Committee concluded that although registers have the potential to assist in the protection of children against sexual abuse, they were not serving that function:

On the basis of its research findings concerning the use of child abuse registers, the Committee found that:

1. A sizeable proportion of cases of child sexual abuse known to the police, physicians and child protection workers was not reported to child abuse registers;

2. Reports to registers had only been made in one in three cases of previous instances of child sexual abuse of cases currently open;

3. Proportionately more minor than serious sexual offences were reported;

4. Child protection workers had consulted registers in relation to only one in five cases which were open;

5. Procedures relating to the exchange of information between provinces are inconsistent and lack formal structure; and

6. Several provinces having registers have no formal procedures with respect to the periodic review and expungement of cases listed in the files of registers.

In the Committee's view, provincial child abuse registers are clearly not being used to the extent or in the manner they had been intended to by legislators. The utility of their functions appear also to be severely limited as case catalogues, research aids or assessment tools.

The use of the registers is characterized by a selective reporting of cases, an infrequent consultation by workers and an absence of effective means of exchanging information between provinces. This system cannot be construed as one that is particularly helpful in affording protection to sexually abused children. In the Committee's judgment, the alternatives are clear: either the registers must become effective means of identifying child sexual abuse or they must be scrapped in favour of more effective procedures to provide protection for these children. The current operation of the registers is both inefficient and ineffective and does little to assist and protect most children who are sexually abused. Most of the workers do not routinely consult this resource, only a fraction of cases which occur is reported, and review and expungement procedures in use in some provinces require clear specification. . . .

What is required is a central source of pooled information for each province rather than the existing inefficient and inaccurate classification systems now in use which serve little useful purpose as means to protect sexually abused children. To the extent that existing systems of classification used by the police, physicians and child protection workers remain unaltered, they will continue to exist by virtue of entrenched custom, professional indifference or for the symbolic purposes of appearing to serve sexually abused victims, but in fact not doing so for most children and youths against whom sexual offences are committed.[34]

## STATUTORY REGISTERS: MANITOBA, NOVA SCOTIA AND QUEBEC

### Manitoba

Manitoba is one of the more interesting provinces for study since it has a statutory child abuse register which was the subject of review. The constitutionality of the register was successfully challenged in the courts in June, 1987, and legislation was brought into force on September 1, 1987 to create a new register.

The original Manitoba register was established in 1971. It was a manual system which handled almost 700 reports and approximately 2,000 entries and responses a year. The existence of the Register was mandated by s.19 of the Manitoba *Child and Family Service Act*, though some of its operations were regulated only by government policy.

The register was confidential.[36] Access was limited to provincial officials involved in child abuse work and to authorized child protection agency staff. The information could be used for the purpose of assisting in investigations of previous abuse to a child or abusive acts by an "offender" and for screening for adoption and hiring staff. Information was also given out to appropriate out-of-province child protection agencies to assist in investigations, and to police and law enforcement agencies in Manitoba for child abuse investigations. There was no legislation or formal policy for amendments or expunction, but occasionally alterations and corrections were made to the register at the request of the agency which placed the information on the register.

The initial decision to review the Manitoba Child Abuse Registry was largely a result of goverment and agency concerns about the register, but there were also a few highly publicized cases where individuals sought expungment of their names and found that there was no mechanism to effect this. The review process involved circulation of a questionnaire to child protection workers and professionals in Manitoba, and child abuse experts in other Canadian jurisdictions. There did not seem to be any attempt to directly involve individuals or lawyers outside the government and child protection service in the review process. It also appears that there was no effort to directly assess the effectiveness of the operations of the Manitoba register.

The Manitoba Advisory Committee on Child Abuse issued its final report on the provincial child abuse register in October, 1986. The Committee recommended major changes, centering on the creation of two "distinct directories" (or sub-registers), one a Child-Victim Registry and the other a Child Abuser Registry.

The Child-Victim Registry would contain the names of victims of abuse, whether abuse was intra- or extra-familial. Names would remain on this Registry until the victim or the youngest sibling of the victim reached 18. Parents of victims were to be notified of registration, and victims could be notified if 12 or over. Access to information on this Registry would be primarily limited to child protection staff engaged in investigating situations of abuse, and otherwise be confidential. Children listed would include victims of physical, sexual or emotional abuse; cases could be listed if "confirmed", and for physical or sexual abuse if "suspected".

Confirmation would not involve a court or tribunal finding, but rather a medical diagnosis for physical and sexual abuse, a psychiatric diagnosis of emotional abuse, and for sexual abuse a police or child protection investigation in which it is concluded there was "no room for doubt". For the suspected cases of physical and sexual abuse, registration would occur if two-thirds of the multi-disciplinary team was "clearly suspicious".

The Child Abuser Registry would contain the names of "confirmed" physical, sexual and emotional abuses. Confirmation of physical or sexual abuse could come from a criminal conviction or an admission, and for emotional abuse from an admission. As well, persons who were "strongly suspected" of sexual abuse would be placed on the Registry despite the absence of a court finding. Suspected sexual abusers would be those who, in the opinion of the majority of a multi-disciplinary team, were considered "likely to have been responsible" for the sexual abuse of a child. Child protection workers would have access to this Registry. In addition, it was proposed that potential employers hiring staff to work in positions of trust with children would be allowed access to the Child Abuser Registry; employers would only be informed of whether or not a name appears. Applicants for employment would have to authorize the release of information.

Individuals would be notified that their names had been placed on the Child Abuser Registry and of their rights. One important new right would be the possibility of seeking removal from the Registry. The removal process would involve an intitial determination by the Director of Child and Family Services, with an appeal to the Ombudsman or Court of Queen's Bench. In an appeal, it would be necessary for the Director to establish on the ordinary civil standard that abuse occurred. There would also be a discretionary process for removal of names if treatment had been undergone by an abuser. In the absence of removal, the name of an abuser would remain on the Register indefinitely.

In March, 1987, an External Review Team issued its *Final Report on The System of Dealing with Child Abuse in Winnipeg*. This report supported the existence of a register, but expressed grave reservations about the use of the "suspected sexual abuser" category for employment screening. This report recommended that only confirmed or admitted child abusers be recorded in the register, commenting: "The not proven [i.e., suspected] category would be nice to know but cannot be defended on human rights grounds".[37] The *External Review Report* did, however, recommend that it be mandatory that "current or potential employees whose responsibilities require the care, instruction or control of children" be screened against the confirmed abuser list, and that "under normal circumstances" confirmed abusers should not be permitted to hold such jobs. The *External Review Report* also noted that there appeared to be a significant lag in reporting cases to the existing Manitoba register, which raised concerns about its effectiveness as a tool for identifying child abuse cases.

On June 19, 1987, in *St. Hilaire v The Director of Child and Family Services*,[38] Justice Carr of the Manitoba Court of Queen's Bench (Family Division) ruled unconstitutional the existing Manitoba Child Abuse Register. The challenge

was launched by a woman on behalf of her son and daughter; the boy had been placed on the register for allegedly sexually abusing his sister.

The judge began by considering whether the register infringed "security of the person", a constitutionally protected interest under s.7 of the *Charter of Rights*.

> The Legislature of Manitoba, for clearly laudable purposes, has created a child abuse register. The list that is maintained labels individuals as being either "suspected abusers" or "suspected victims".
>
> Although the register is not "public", it is clear that:
>
> 1) An individual's name could be on the register without their knowledge.
>
> 2) The register is available to the police and various government employees, including those responsible for approving adoptions, hiring child care workers and making decisions with regard to the apprehension of children. So, for example, if an individual applies for a job with a child caring agency, they may be "blackballed" on the mere suspicion of a wrongful act. So, too, if they were seeking to adopt a child, and so on.
>
> 3) The inclusion of one's name on the register would likely affect a child caring agency's decision with respect to what action ought to be taken upon the reporting of a second "occurrence". That is, a child might be apprehended from a parent sooner because the parent was on the register.
>
> 4) The register, although in some respects "confidential", is available to a large number of people including those involved in "the study of and research into abuse".
>
> It is not the compilation of a list **per se** that offends s. 7, for, to be sure, government agencies are free to maintain lists. Lists offend the **Charter**, however, when their legislative base sanctions, indeed requires, that their compilation and maintenance be virtually secret and when inclusion has significant negative implications for and consequences to those included.
>
> It is conceded by the respondents that the applicants have been deprived of certain rights, for example, that their reputation may have been harmed, that they may have suffered a loss of dignity and their employment opportunities may have been somewhat restricted. The contention is, however, that these rights are not protected by the **Charter**. With respect, I cannot conceive that the framers of the **Charter** meant to exclude from protection the sort of intrusion evident and indeed admitted in this case. . . .
>
> In certain circumstances . . . we are accustomed to thinking of dignity, reputation and the like as aspects of the person.
>
> I have no difficulty concluding that the impugned legislation is an invasion of a person's security as contemplated by s. 7 of the **Charter**.

The judge went on to consider whether the Manitoba register accorded with the "principles of fundamental justice", and concluded it did not:

> The impugned legislation allows one's name to be placed on the register as a result of a complaint that is followed by an investigation, but not necessarily a hearing. One may or may not receive notice that they are being placed on the list, for only parents of a child alleged to have been abused are guaranteed notice. So that if you are on the list for being suspected of abusing your child, you **must** receive notice. If it is your niece you are suspected of abusing, you **may** receive notice. There is no provision allowing for an application to be made to have one's name removed from the list. In the case before me, although the aplicants' names were ultimately removed, the reason for the removal is not clear.
>
> . . . . the impugned legislation is patently unfair, for it is totally devoid of all procedural fairness. It is also . . . substantively unfair. . . .

Finally, the judge considered whether the Manitoba scheme could be saved by s.1 of the *Charter of Rights*, as a limit "demonstrably justified in a free and democratic society". While recognizing that the register had an "obviously valid objective", the judge concluded that the infringement of rights was disproportionate to the ends achieved.

> I have stated earlier in my reasons that the impugned legislation provides virtually no protection for those who find themselves on the register. The legislation could easily have been drafted to meet its laudable objective without so completely interfering with the rights of "targeted" individuals. Indeed other Legislatures within the Canadian democracy have done so.

In response to the two reports and the constitutional decision, the Manitoba government introduced legislation on July 7, 1987 to alter its child abuse register. This legislation incorporated many of the recommendations of the October, 1986 report of the Provincial Advisory Committee, though providing additional safeguards for individuals identified as abusers.

Child protection agencies are to establish child abuse committees to review cases of suspected child abuse.

Names of abused children are to be reported to the register if there has been:

a) a criminal conviction;

b) a court finding of abuse as part of a child protection proceeding; or

c) a doctor or psychologist is of the opinion that the child has been abused and a majority of the agency child abuse committee believes the child has been abused.

Names of abusers are to be reported to the register if there has been:

a) a criminal conviction;

b) a court finding of abuse as part of a child protection proceeding;

c) an admission of abuse made to a police officer or a child protection worker; or

d) the agency child abuse committee is of the opinion that abuse occurred.

Where there is a court finding of abuse, registration is to occur automatically. In all cases where names are registered without a court finding there is a process for external review. Individuals are notified that their names have been reported for registration and they have 30 days to object. If there is no objection registration will occur. If there is an objection there will be a hearing conducted by a three member multi-disciplinary tribunal to determine whether, on the civil standard of balance of probabilities, abuse occurred. Parties may be represented by counsel at these hearings, call witnesses and engage in cross-examination. There is a right of appeal from the decisions of the tribunal to the Court of Queen's Bench on questions of law or jurisdiction. There is also a right to a rehearing if a party is able to produce new evidence not available at the time of the original tribunal hearing.

Abusers whose names are on the register as a result of a criminal conviction may apply to the three member tribunal for removal of their names if they have received a pardon; no criteria for removal of names is provided in the legislation.

The information on the register may be used to assist in child abuse investigations, and for assessing foster and adoptive parents and applicants for employment in child protection agencies, schools, day-care centres and other positions where "employees will be responsible for the care of children".

As will be apparent from our recommendations for Ontario, set out in Chapter V, we found the Manitoba reforms interesting and were influenced by them. However, our proposals differ from those put forward in Manitoba in a number of key respects.

**Nova Scotia**

The Nova Scotia child abuse register also has recently been the subject of a challenge under the *Charter of Rights*, although this challenge was not successful. The Nova Scotia register is governed by the *Children's Services Act* and regulations made pursuant to that statute.[40] Reports of child abuse are sent by local child protection agencies to the office of the central Administrator. If "in the opinion of the Administrator, the investigation reveals that the child . . . is the subject of child abuse",[41] details of the case including the name of the child and the alleged abuser shall be recorded in the register. Subsection 43(2) of the Act specifies that the child abuse register is confidential and that it shall be used only for research and to assist "in the study of the circumstances where a child is suspected to be

in need of protection". The Act also requires that a person whose name appears on the register as one who is "alleged to have abused a child" shall be informed of the fact and of their right to seek expunction. Under subsection 43(1B) applications for expunction are made to a Family Court judge who "may exercise . . . his discretion as to whether the information should remain in or be struck from the register."

One of the first court decisions dealing with the Nova Scotia register considered an application by a father for an order removing his name from the child abuse register. The father admitted that he struck his daughter with a belt and caused bruising, but he was of the view that this constituted acceptable discipline. A pediatrician testified that in his opinion the manner of administering discipline constituted abuse. In the expunction proceeding in Family Court, the judge ruled that the failure to register the case within time limits prescribed by the regulations did not nullify the registration, though he remarked that such a delay is "not to be recommended . . . mainly because it could be adverse to a child's best interests". The judge also considered the appropriate standard of proof for registration.

> I made an interim assessment of the situation at the time of the first hearing concerning the standard of proof applicable to consideration of information being placed on the child abuse register. It seemed to me, at that time, before having heard the evidence and considering the matter in depth, that the administrator acting under the regulations would have to employ the civil standard of proof in respect to his consideration of whether to register the information including the applicant's name.
>
> Having now heard the evidence, having read the regulations and the relevant sections of the Act and the briefs submitted by counsel, I have come to a different and final conclusion.
>
> The administrator is not carrying out a judicial function in discharging his responsibilities under the regulations. He does not exercise judicial discretion but, as I indicated earlier, he does exercise common sense. That is all that can be expected of him under the circumstances. He must not act maliciously, capriciously or negligently but conscientiously and do what he feels is appropriate given the fact that to a considerable extent he is acting on hearsay and his own instinct based on experience.
>
> His actions will be tested later on in open court where all evidence is under oath and all concerned parties are given an opportunity to be heard and to be represented by legal counsel.[42]

However, in reviewing the decision the judge applied the ordinary civil standard of proof.

> After having heard the evidence leading up to the episode, the incident itself and the resulting bruises on the child, I have come to the conclusion. . . . on the balance of probabilities that the actions of the father exceeded mere discipline and amounted to abuse of the child.[43]

The judge ruled against the father on a challenge that registration violated s. 7 of the *Charter of Rights*, as an infringement of "liberty and security of the person" not in "accordance with the principles of fundamental justice".

> . . . because of the confidentiality of the register and the very limited statistical use of the information therein, I fail to see the harm or the restriction to his life, liberty or security of his person.
>
> Furthermore, under s.43(1A) of the Act, the applicant has the right to be heard in a court of law. As I indicated in my interim assessment of the matter, I held that the burden of proof was on the respondent, and that is where the burden is in these proceedings. . . .
>
> If there was a technical violation of the applicant's rights pending a hearing under s.43(1A), it is a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the Charter. The Children's Services Act . . . is designed for the purpose of protecting children. If in the wisdom of society a register of abuse is necessary as part of the protection process, in my opinion, it is a reasonable limit on the rights of the alleged abuser. If the administrator has made a mistake in a given case, the court has the jurisdiction to order the information to be removed. This seems to me to be fair and reasonable and not an abuse of rights or of process.[44]

In a more recent case,[45] a father sought expunction of his name from the register "to clear his name". In the aftermath of a bitter custody dispute, the mother alleged her estranged husband had sexually abused their young daughter while exercising access rights. There was no criminal prosecution and the allegations were not raised in custody or access proceedings, but after investigation the case was reported on the Register. At the expunction hearing, Judge Daley appeared to accept that initial registration could properly be on the basis of "credible evidence" of abuse, but that in the Family Court proceeding, the onus was on the Administrator to prove on the civil standard that abuse occurred. After four days of hearing, including testimony from several experts on child abuse and a polygraph operator, the judge ordered the name struck, though acknowledging "some reluctance because I have a disquieting feeling about this case".

**Quebec**

In Quebec, the *Youth Protection Act* requires local child welfare authorities to notify a central child abuse register of every child who is "the victim of sexual assault or who is subject to physical ill-treatment through violence or neglect".[46] The register contains information on abused children, but does not maintain a separate index of abusers.

There are apparently significant variations in local reporting rates, since in some localities any suspected case of abuse is reported while in others a report will only be made if there is a court finding of abuse. Names are removed when a child reaches the age of 18.

The child protection authorities have access to the register for the purpose of assisting in child abuse investigations, but the register is otherwise confidential. It is not used for any type of screening. At present the register is manual, but there are plans for computerization.

## INDEXES

Most Canadian provinces do not have a formal child abuse register, but rather have a centralized index of all child protection cases. These indexes serve a function in some ways analogous to a child abuse register and may be subject to some of the same criticisms and misuse as a register, though none of them has been the subject of legislation or judicial decision.

### British Columbia

The British Columbia experience merits attention since the province abolished its formal child abuse register in 1984 in response to a court challenge commenced by an alleged offender whose name was on the register. Since 1984 British Columbia has maintained an index of child protection cases, but consideration is now being given to the re-establishment of a formal register.

At present there is a centralized computerized index of all child protection cases in British Columbia. The index contains the names of all families receiving service and all children in care. Registration is on the basis of service being provided, not abuse; services are often provided in situations where parents cannot adequately care for their children but no abuse has occurred. If an abuse investigation is conducted but no service or intervention occurs, a record is kept only in the district office and destroyed after two years. Names of suspected or convicted abusers who are not members of a child's family do not appear in the central index.[47]

In 1986 there was an investigation into sexual abuse of children in British Columbia by school board employees. This was a response to the Noyes case, where a teacher with a known history of sexual abuse but no criminal convictions moved from one school to another in British Columbia, abusing children in each location. The resulting *Enquiry Report* dealt with a number of issues, including the provincial experience with child abuse registers. On this issue, the *Report* included somewhat equivocal recommendations.

> 1) In British Columbia, the Superintendent of Child Welfare and delegates of the Ministry of the Attorney General [should] review the legal aspects concerning the entry of names, notification, expungement and exchange of information between provincial registers.
>
> 2) That a central source of pooled information for the Province rather than the existing inefficient and inaccurate classification system be contemplated as a better alternative to the existing system.

3) That discussion take place between the Ministries of Education and Social Services and Housing to establish procedures for accessing relevant information stored by the Ministry of Social Services and Housing, when the Ministry or School Boards are determining suitability for employment.

4) That procedures relating to the entry, expungement, and sharing of information be clearly dealt with before any Child Abuse Register is implemented.[48]

At about the same time as the Enquiry reported, the Task Force on Child Abuse of the British Columbia School Trustees Association issued its own recommendations. It took a restrained approach to child abuse registers, concluding that only criminal record checks for applicants for teaching positions were justified.

> Across North America, various jurisdictions have attempted to collect, store, and access information on child abuse offenders and victims through various forms of registries or data banks. The idea of such registries is that investigators would be able to determine if an individual has been the subject of a person's suspicion or conviction.
>
> Research reviewed by the Task Force indicated that such registries have not been successful. Individual professionals tend to underuse or misuse the system. Safeguards necessary to protect the confidentiality of records and to prevent dissemination of unsubstantiated allegations tend to be cumbersome and costly. The Badgley Commission has not recommended child abuse registries as a screening device. The Task Force concurs with this evaluation.
>
> Traditional methods of screening applicants for admission to teacher-training programs consist mainly of personal references from individuals in positions of authority such as clergy or former teachers. In different times, prior to the development of the anonymity of modern urban life, this was probably an effective screening device. Today, it would be appropriate to consider other measures by which applicants for admission to teacher-training programs could be screened prior to entry into such programs.
>
> It is therefore recommended: that the Ministry of Education, in cooperation with the faculties of education, investigate ways in which the application procedure for admission into teacher-training programs can include questions regarding criminal records and outstanding criminal charges . . . .
>
> There was no evidence, research, or submission received by the Task Force which justified the expense and difficulty of implementing a criminal record check of current school board employees. In the view of the Task Force, given the limited usefulness of the procedure in detecting offenders, the cost of the system would not be justified.
>
> At the same time, the Task Force was persuaded that a more limited

use of criminal record checks for prospective employees could be useful . . . .[49]

**Alberta**

Alberta has a centralized Child Welfare Information System (CWIS), which is a computerized record of all children reported as being "in need of protection" and the names of the persons causing the child to require protection. It should be noted that the concept of the "child in need of protection" includes the abused child, but is broader. The index contains names where there is only a suspicion of abuse or the need for protection, though workers may exercise a discretion to not register a name where an initial report is malicious or unfounded. All protection workers in the province have access to the computerized index. Information is also shared with the provincial Solicitor General's department to assist in screening employees for custody homes and for the preparation of pre-sentence reports. The Alberta Department of Social Services is presently considering the possibility of expanding access to the system, as well as developing a policy for expungement of information.[50]

**Saskatchewan**

Saskatchewan had a manual child abuse register from 1977 to 1983. It now has a computerized Client Index System with a centralized record of all cases receiving assistance from the province's Family Services Program. Cases are classified by type, so statistics on abuse are generated. When a case is registered, any prior contacts with the same family are provided to the case worker. Alerts from other provinces are programmed into the system. There is apparently no listing of extra-familial abusers or use of the system for screening purposes.[51]

**Newfoundland, Prince Edward Island and Northwest Territories**

These jurisdictions have a centralized index for all child protection cases. These indexes are used for statistical purposes and case monitoring.[52]

**Indexes: Concluding Comment**

The present Ontario Child Abuse Register is really a centralized index of child abuse cases in the province. As discussed in this section of the report, some Canadian jurisdictions have centralized indexes of all child protection cases including, but not limited to, abuse cases. Having a centralized index of all child protection cases may appear to be a "solution" for some of the civil liberties and definitional problems associated with child abuse registers, and clearly this motivated provinces such as British Columbia to establish a general index rather than a relatively narrow abuse register.

It should be recognized that those provinces with centralized indexes also have a centralized service delivery system, which legally and administratively lends itself to having such a province-wide index. While the possibility of establishing an index of all child protection cases will be explored further in Chapters IV and V of this report, it should for the moment be noted that Ontario has a system of service delivery based on local Children's Aid Societies with a substantial degree of administrative, legal and political autonomy. This makes the establishment of a centralized index of all child protection cases in Ontario a more complex issue than in provinces with a centralized delivery system.

It must also be appreciated that just as there may be concerns about the use and misuse of information from child abuse registers, so too may there be concerns about centralized indexes. In particular, if use is made of a child protection index for job screening, which appears to be the case in at least one Canadian province, there may be significant legal, moral and political considerations to be addressed. These considerations are similar to those arising in regard to a child abuse register.

## FOOTNOTES

1. Besharov (1977-78), p. 689.
2. Ibid, pp. 690-691.
3. S.21(c), *Draft Model Protection Act* (1977); cited from Besharov (1977-78), p. 695.
4. Besharov (1977-78), p. 695.
5. Ibid, p. 704.
6. Ibid, pp. 749-751.
7. This table is based on Table 1, Reitz (1984), p. 14, and updated with information from "Unequal and Inadequate Protection Under the Law: States Child Abuse Statutes" p. 143, and Flango (1987). There is some controversy about what exactly constitutes a "centralized child abuse register", making an exact count difficult. In 1986, North Dakota had no register, while the Minnesota register had only nonidentifying information.
8. Flango (1987), pp. 13 and 20.
9. See Whiting (1977), where the author concludes that "the arguments for a registry with identifying names are largely found wanting."
10. C. Thompson, Director, Protective Services, Department of Human Services, Minnesota, personal communication, April 2, 1987; and Flango (1987), p. 13.
11. See e.g., *Bohn v. County of Dakota*, 722 F.2d 1433 (8th Cir. 1985).
12. R.L. Winters, Division of Children and Family Services, Washington, Department of Social and Health Services, personal communication, March 31,1987.
13. Illinois, *Abused and Neglected Child Reporting Act* (Chapter 23, paras. 2051-2061.6), amended by P.A. 84 1318, s.3.
14. Pennsylvania, *Child Protective Services Law*, 11 P.S., para. 2201, s.3.
15. New York *Social Services Law*, para 424-a, amended New York Laws 1985, ch. 677.
16. New York Department of Social Services, *Child Protective Services: Report to the Governor and the Legislature*, 1982, p. 20.
17. Florida Statutes, Title 30, Social Welfare, Chapter 415, Abuse, Neglect and Exploitation, ss. 415.502 to 415.514, enacted as Florida Laws 1985, c. 85-54. An interesting discussion of the background and provision is found in Nancy Lawton, "Who's Minding the Cradle? Regulatory Reform in the Child Care Industry" (1985).

18. In *Anderson v. Department of Health and Rehabilitative Services*, 485 So. 2d 849 (Fla. App. 1 Dist. 1986), the state argued that "substantiated indicated abuse" did not require an independent determination. The view was rejected by the court as a matter of statutory interpretation and on constitutional grounds.

19. V. Flango, Project Director, Central Registries for Child Abuse and Neglect Project, National Center for State Courts, Williamsburg, Va., personal communication, May 28, 1987.

20. United States P.L. 98-473, s. 40l(2)(A).

21. The Boy Scouts were recently held liable for a total of $2.54 million for psychological damage suffered by a child as a result of sexual abuse by a Scout leader. The national organization was liable for not having screening measures in place for adults taking leadership roles with adolescent boys, while the local organization was ordered to pay punitive damages as it had actual knowledge of a history of abuse and took no steps to prevent it. See "Scouts organization liable for pedophile Scoutmaster", *Lawyers Weekly*, May 29, 1987.

22. See Part X, "Employer Access to Sex Offence Criminal History Record Information", Proposed Model Legislation, *Victims of Crime*, May, 1986, available through United States Department of Justice, Office of Justice Programs.

23. Illinois, *Abused Child Act* 1s. 7.16, P.A. 84-6ll, Chap. 23, para. 2057, s. 17.

24. New York and Illinois "credible evidence"; New Hampshire "probable cause to believe".

25. 520 A.2d 1246, at 1249 (Pa. Cmwlth. 1987).

26. 772 F.2d. 1433, at 1436 (8th Cir. 1985), cert denied 106 S.C. 1192.

27. 513 A.2d 331, at 338 (N.H. 1986).

28. Id, at 340. If an individual whose name is on a register cannot be located with reasonable efforts, it would not seem constitutionally necessary to give written or any other notice of the fact of registration.

29. 485 So.2d 849, at 854 (Fla. App. I Dist. 1986).

30. 772 F. Supp. 2d. 1433, at 1438-35 (8th Cir. 1985), cert. denied, 106 S.C.1192. To a similar effect, see *Petition of Bagley*, supra n.27. For a decision taking a much more expansive view of the constitutional requirements for the operation of a child abuse register, see *Sims v. Texas*, 485 F. Supp. 1179 (1977). That decision was overturned on procedural grounds, *Moore v. Sims*, 99 S.C. 2371 (1979).

31. *Cruz v. Pennsylvania Department of Public Welfare*, 472 A.2d.725 (Pa. Cmwlth., 1984), see also *Coachman v. State*, 692 S.W. 2d. 940 (Tex. App. 1

Dist. 1985) (no constitutional right to name of reporter or to access case file of child protection agency).

32. *Leigh County v. Pennsylvania Department of Public Welfare*, 516 A.2d. 1305 (Pa. Cmwlth., 1986).

33. For a discussion of child abuse registers in Britain, see Reitz (1984), pp. 24-29; for a more recent commentary see Freeman (1985), pp. 13-16.

34. *Sexual Offences Against Children: Report of the Committee on Sexual Offences Against Children and Youths*, 1984, vol. 1, pp. 379-380.

35. S.M. 1985, c.8/C80.

36. Man. Reg. 60/86, s.5 governs access to the register. The description of the present operation and proposals for reform of the Manitoba register are taken from: Manitoba Provincial Advisory Committee on Child Abuse, *Final Report on the Review and Recommendations on the Provincial Child Abuse Registry*, October 1986.

37. Sigurdson, et al., (1987), pp. 270-274.

38. As yet unreported decision, June 19, 1987; reported Ontario *Lawyers Weekly*, July 17, 1987, pp. 1 and 9.

39. *An Act to Amend the Child and Family Services Act (2)*, Bill 72, 2nd Session, 33rd Legislature, Third Reading, July 16, proclaimed in force Sept. 1,1987.

40. C.S.N.S. c. C-13, s.42-43; N.S. Reg 8/83.

41. N.S. Reg. 8/83, s.11(1).

42. (1986) 50 R.F.L.(2d) 108, at 110 (N.S. Fam. Ct.).

43. Id. at 109.

44. Id. at 111-112.

45. *D.M.E. v. Minister of Social Services*, as yet unreported February 27, 1987, per Daley, J.F.C. (available through *Nova Scotia Current Law*, Issue No. 1987/88-01).

46. *Youth Protection Act*, R.S.Q. 1977, c.P.-34.1, as amended by S.Q. 1984, c.4, s.12, ss. 27 and 41; and V. Dowie, Québec Comité de la protection de la jeunesse, personal communication, Sept. 16, 1987. While s.27 of the *Youth Protection Act* specifies that names are to be removed when a child reaches 21, in practice they are removed when a child reaches 18.

47. L. Ohlmann, Manager, Family and Children's Services Division, B.C. Ministry of Social Services and Housing, personal communication, March 23, 1987.

48. Sullivan and Williams (1986), p. 41.

49. British Columbia School Trustees Association (1986), pp. 49-50.

50. A. Nobert, Director Protection Services, Alberta Social Services, personal communication, March 11, 1987.

51. D. Perrins, Executive Director, Family Support Division, Saskatchewan Social Services, personal communication March 26, 1987; included copy of report dated December 31, 1986.

52. S. Devine, Assistant Director, Child Welfare Services, Newfoundland Department of Social Services, personal communication, March 20, 1987; S. Bentley, Coordinator of Child Protection Services, Prince Edward Island, Department of Health and Social Services, personal communication, July 20, 1987; and D. Doyle, Superintendent of Child Welfare, Northwest Territories Social Services, personal communication, February 27, 1987.

## CHAPTER III: THE CURRENT ONTARIO REGISTER: STUDY FINDINGS

### INTRODUCTION

This chapter provides a description of the Ontario Child Abuse Register, together with the empirical findings of this Review. First, the methodology of the study and the responding groups are discussed. Then, the registration process is described and analyzed in terms of decision making, criteria for registration and procedures. Next, the expunction process is discussed, along with the perceptions of those involved and the analysis of 40 expunction hearing decisions. Following this section, the question of access for screening purposes is considered in detail. The views of the respondents about the effectiveness of the Register and their ideas for reform are then presented. The chapter concludes with a discussion of criminal records checks and the alert system.

### METHODOLOGY

All of the 51 Children's Aid Societies were included in the Review.[1] Forty-one CASs were sent questionnaires directed to those believed to be involved in the registration process: each Executive Director and/or a Senior Manager, approximately two-thirds of the Supervisors, and all Intake and Family Service Workers (Front Line Workers). Each Executive Director in the 41 CASs was asked either to complete a questionnaire or, where appropriate, to have a Senior Manager complete parts or all of it. An extra questionnaire for an additional Senior Manager was included for CASs where the size of the agency warranted. Copies of all instruments (questionnaires and interviews) can be seen in Appendix A.

Based on size and geographic location in the province, ten CASs were selected to be visited for the purpose of conducting personal interviews; one of these CASs was used to pilot the interview protocols. Three "small", four "medium" and three "large" agencies were identified, and interviews were held with Front Line Workers who had the most experience with registration, Supervisors, the Executive Director and other Senior Managers involved with registration. If the agency had staff lawyers, at least one was interviewed; where applicable, the court worker was interviewed in lieu of the lawyer.

In the location of the 10 CASs visited, the following took place:

1. advertisements were placed in local newspapers soliciting letters or collect phone calls with opinions and suggestions regarding the Register;

2. representatives of the local school boards were interviewed by telephone;

3. Ministry of Community and Social Services Program Supervisors were interviewed by telephone.

MCSS Program Supervisors responsible for the remaining 41 CASs were sent questionnaires.

Coroners were sent a questionnaire in 21 centres; it was anticipated returns would be low since very few would have experience with using the Register.

Forty-two letters requesting position papers were sent to potential users of a register and those affected by the current registration process, including child-serving volunteer organizations, school boards, police, teachers' federations, professional associations of both social workers and CAS lawyers, and a men's right group.

Forty expunction hearing decisions rendered since 1984 were summarized and analyzed. Lawyers who had represented persons seeking expunction were contacted by telephone and in person for interviews about their views on the registration and expunction process.

The current three Hearing Officers were interviewed. Since it was difficult to meet individually with each one, those interviews were conducted by telephone. Personal interviews were conducted with independent researchers who had used the Register, representatives of the Office of the Official Guardian, the Register staff and key MCSS personnel.

It was felt essential for the Review to learn of the views and experiences of individuals whose names were placed on the Register. Attempts were made to solicit responses through newspaper advertisements and articles, but there were very few individuals who responded. It was decided that individuals on the Register should also be contacted through mailed questionnaires. Since the Director of the Register was concerned about the preservation of anonymity, he declined to send out letters to registered abusers; it was agreed that the Review Team would ask the Executive Directors of the ten visited CASs to address and mail out to a number of individuals registered in 1986 pre-stamped envelopes containing a letter, a brief questionnaire and a stamped return envelope (see Appendix B). After much deliberation over whether to send the material by registered or regular mail, it was decided that a letter sent by regular mail would attract less attention from people in the household. Cooperating CASs were asked to exclude particularly sensitive cases from the mailing. It must be emphasized that the Review Team did not know the identity of individuals to whom letters were sent. One of the fears was that registrants might perceive that their case was being "reopened". With the possibility of upsetting registrants, it was not surprising that one CAS turned down our request, despite a supporting letter sent by the Assistant Deputy Minister, Mr. Gerry Duda. Another CAS agreed to act as a substitute.

Approximately 327 letters with questionnaires were sent out by the ten CASs to persons registered between January and December 1986; we learned of only one letter which reached the wrong person through address error. In the letter, registrants were requested to call collect for an interview in person or by telephone,

and offered the sum of $10 if they did so. There were only three registrants who contacted us who seemed primarily interested in receiving the money.

There were two cases where lawyers for registered persons expressed concern that their clients had been contacted. In one case the registered person was an elderly man who apparently was registered in 1986 for an incident alleged to have occurred some 20 years earlier. Through the media, the man's lawyer characterized the letter sent by the Review team as "irresponsible" and "mean-spirited". The incident and ensuing publicity may have helped to dramatize some of the unfortunate aspects of the Register, as media attention quickly shifted from the Review to the Register itself. In the other case a lawyer corresponded directly with the Review Team indicating that his client felt discomfort at being contacted, but also believed that the registration process had been unfair. With the exception of these two incidents, those registrants who contacted the Review Team seemed pleased to have the opportunity to share their views and experiences, and a significant number expressed relief that "their side of the story" could be told.

## Data Presentation

To keep the report within reasonable limits of length, we have included tables which highlight only the most important data. Tables which give more detailed information are presented in Appendix D. They are listed in the Table of Contents.

## RESPONDENTS

Table 3 indicates the numbers of MCSS Program Supervisors and CAS personnel who responded to questionnaires or were interviewed. (When we discuss the responses of both Executive Directors and Senior Managers, we refer to them as "Directors".)

Questionnaires were returned from 40 CASs. In addition, one CAS returned a position paper in lieu of all questionnaires. Thus, all CASs in the province participated in the study.

**TABLE 3: CHILDREN'S AID SOCIETY AND MINISTRY RESPONDENTS**

| | RESPONDED | % RETURNS |
|---|---|---|
| **Questionnaires:** | | |
| MCSS Program Supervisors | 27 | 84 |
| CASs: (n = 41) | | |
| Executive Directors/ Senior Managers | 52 | 90* |
| Supervisors | 107 | 78** |
| Intake/Family Service Workers | 510 | 73** |
| **Interviews:** | | |
| MCSS Program Supervisors | 10 | |
| CASs: (n = 10) | | |
| Intake/Family Service Workers | 48 | |
| Child Abuse Specialists/Consultants | 7 | |
| Supervisors | 20 | |
| Senior Managers | 10 | |
| Executive Directors | 7 | |
| Lawyers/Court Workers | 9 | |

* This percentage represents the proportion of CASs for which a questionnaire was received from either the Executive Director or a designated Senior Manager. All CASs were represented in the survey returns, but four were not represented by the Executive Director or a delegate; in these agencies Supervisors and Workers did participate.

** These percentage figures are based on the number of questionnaires sent out to CASs. Sufficient questionnaires were included in each CAS's package for all Supervisors and Intake/Family Service Workers (based on estimates in 1986 OACAS Survey); however, some Directors selected only those with a great deal of experience to complete the questionnaire. Consequently, these percentages underestimate the real rates.

The number of interviews in the ten CASs visited differed depending on the size of the agency. The purpose of the interviews was to clarify issues rather than to simply add more data. The interview data are included in this report only in the form of selected quotations to illustrate points and to add some detailed examples to the questionnaire responses. Unless otherwise indicated, tabular data represent only the results from the 41 CASs which were surveyed by questionnaire.

Table 4 presents the respondents that were outside of a CAS or the Ministry. Some letters and phone calls were received from citizens (most of whom were registrants or their relatives) and lawyers who heard about the Review from the announcement of the study, the advertisements, an article by the Principal Reviewer in the *Lawyers Weekly*, or other media coverage. Letters stating a position regarding the Register were directed to the Review Team from 30 organizations and individuals. The organizations are listed in Appendix C.

**TABLE 4: OTHER RESPONDENTS**

| RESPONDING GROUPS | SOLICITED | RESPONDED |
|---|---|---|
| **Position Papers:** | | |
| Teachers' Federations | 4 | 4 |
| School Boards | 20 | 9 |
| Provincial Government Services | 7 | 4 |
| Municipal Government Services | | 1 |
| Agencies/Assocs/Organizations | 11 | 9 |
| Lawyers(CAS) | | 1 |
| CAS Executive Directors | | 4 |
| **Interviews:** | | |
| Teachers' Federations | 1 | 1 |
| School Boards | 10 | 10 |
| Registrant Lawyers | 26 | 27* |
| Researchers | 3 | 3 |
| **Questionnaires/Interviews:** | | |
| Coroners | 21 | 12 |
| Other responses to ads/articles** | | 10 |
| Registrants | 327 | 62 |

* Includes three unsolicited letters and one unsolicited telephone call.

** In the letters, it was difficult to determine whether the individual was on the Register, but most appeared to be registrants or their relatives.

## THE REGISTRATION PROCESS

This section considers various aspects of the registration process including: legislation and guidelines, summary data from the Register, information on verification and the decision to register, criteria for registering, enquiries to the Register, the length of time a name remains on the Register and the registration of abusers under the age of 18.

### Legislation and Guidelines

The registration process is governed by the *C.F.S.A.* and the *Guidelines for Reporting to the Child Abuse Register, February 1981* (hereafter called *Guidelines*). The Act creates the Register and imposes an obligation on CASs to report "verified" abuse.

> s.71(3) A society that receives a report under section 68 that a child . . . is or may be suffering or may have suffered abuse shall forthwith verify the reported information . . . in the manner determined by the Director, and if the **information is verified**, the society that verified it

shall forthwith report it to the Director in the prescribed form. [Emphasis added]

s.71(5) The Director shall maintain a register in the manner prescribed by the regulations for the purpose of recording information reported to the Director under subsection (3), but the register shall not contain information that has the effect of identifying a person who reports to a society under subsection 68 (2) or (3) and is not the subject of the report.

Section 68 of the *C.F.S.A.* deals with the obligation to report suspected cases of child abuse to the CAS for investigation. Subsection 68(1) defines "abuse", for the purpose of reporting and registration as "a child in need of protection within the mean of clause 37(2)(a), (c), (e), (f), or (h)". Subsection 37(2) thus provides the operative definition of an "abused child":

s.37(2) Where

(a) the child has suffered physical harm, inflicted by the person **having charge of the child** or caused by that person's failure to care and provide for or supervise and protect the child adequately . .

(c) the child has been sexually molested or sexually exploited, by the person **having charge of the child** or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child . . .

(e) the child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the **child's parent** or the **person having charge of the child** does not provide or refuses or is unavailable or unable to consent to, the treatment;

(f) the child has suffered emotional harm, demonstrated by severe,

(i) anxiety,

(ii) depression,

(iii) withdrawal, or

(iv) self-destructive or aggressive behaviour, and the child's parent or the person **having charge of the child** does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm

. . .

(h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person **having charge of the child** does not provide, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition. . . . [Emphasis added]

It is important to note that from 1979 to November 1, 1985 the provisions of the *Child Welfare Act, 1978 (C.W.A., 1978)* governed the operation of the Register. These provisions were essentially identical to those found in the *C.F.S.A.*, except that there was a much simpler definition of "abuse" for the purpose of reporting and registration. Subsection 47(1) of the *C.W.A., 1978* defined "abuse" as:

> a condition of:
>
> (a) physical harm
>
> (b) malnutrition or mental ill-health of a degree that if not immediately remedied could seriously impair growth and development or result in permanent injury or death; or
>
> (c) sexual molestation.

While the legal definition of "abuse" changed as a result of the *C.F.S.A.*, which came into force on November 1, 1985, in practice registration has apparently continued to be governed by the Ministry's 1981 *Guidelines*, which of course are based on the *C.W.A., 1978* definition. *Volume 4 - Child Abuse Reporting under the C.F.S.A., December 1985* includes the full definition, but it is still the 1981 *Guidelines* document which is heavily relied upon by social workers and Hearing Officers to operationalize the definition of "abuse". After setting out s.47(1) of the *C.W.A., 1978*, the *Guidelines* state (p. 4-5):

> **Condition**
>
> The importance of the word "condition" in the definition is its emphasis on two vital aspects of child abuse:
>
> i) Normally, the situation which needs reporting is the one in which there is a perceived **pattern of abusive behaviour**. The worker needs to judge whether the indicators of abuse and/or the profiles of abuse in the caretaker are sufficiently present. A single outburst of temper might result in an isolated incident of a relatively minor nature which is not necessarily symptomatic of a condition of abuse. Alternatively, it could indicate a situation where there is an on-going potential for abuse in that the caretaker cannot control his or her emotions. All injuries must be seen and interpreted **within the context of the event(s) and the family situation as a whole**.
>
> Because of the broadness of the definition of abuse and mandatory reporting in the legislation, it is very important that the report be on a condition of abuse and not just a **minor** isolated incident. The situation should be serious enough to warrant a report to the Child Abuse Register and should not just be a single accidental injury.
>
> This is not to say that intent is a necessary prerequisite for abuse to exist. An irresponsible, neglectful parent who fails to **prevent** abuse to his/her child may not "intend" any harm but

should still be registered. In any case where the alleged abuser is not the parent or guardian, thought should be given to whether the parent/guardian should also be registered as a permitter of the abuse.

ii) The second ramification of "condition" is that it is not necessary to wait until there is visible injury inflicted for abuse to be reportable. Continued threats of harm or punishment to the child may create a condition of emotional abuse which should be reported to the Register. Similarly a **series** of minor incidents, any of which in isolation might not be considered abuse may, when considered together, constitute a condition of abuse.

It is this pervasive **condition** of abuse where the child's physical, mental, or emotional health is in danger of harm which needs to be identified and reported by the social worker.

iii) **If, however, the injuries are serious, the issue of condition need not necessarily apply even though it is an isolated incident**.

It is important to remember that the preceding discussion relates to child abuse in the context of the new reporting laws. The duty to report certain cases of abuse and the obligation to take immediate protective action on the child's behalf are separate and distinct responsibilities. The focus of the Children's Aid Society must always be fixed on the protection of a child from immediate harm and the prevention of further or more serious harm.

**Types of Abuse**

**Physical harm** is to be reported if the child has been injured or is at risk of being injured by a person who has care, custody, control or charge of him, or if that person has permitted the injury. For example, a child who is beaten, poisoned, burned or wounded is "abused" within the ambit of the reporting definition. It is not, however, necessary that the indications of injury be visible. Physical harm for the purposes of these provisions is also reportable if the child's health is at serious risk because of an adult's neglect or refusal to obtain necessary care or treatment for him. The **malnutrition** definition of "abuse" addresses the failure to provide sufficient or the right kind of nourishment and includes dehydration. Failure to thrive diagnoses are included in the intent of the definition.

**Mental ill-health** is to be reported if the child's emotional needs have been or are being so neglected or interfered with that his normal development has been seriously affected and he is likely to be impaired. In such cases, the mental ill health is reportable if the action or attitude of the person who has the child's care is believed to be the primary cause of the child's condition.

> **Sexual molestation** is to be reported if sexual activity has occurred or is occurring between an adult and a child. An adult who **commits** or **permits** such abuse may be identified as an alleged abuser. **The consent of the child is irrelevant, as is the absence of physical injury**. Inappropriate or excessive sexual activity between children beyond normal experimentation may constitute molestation if the difference in ages between the children is so significant that the older one is clearly taking sexual advantage of the younger, or if an adult in charge of either child knows about it and does nothing. In the latter case, **the adult as the permitter of the abuse is also to be reported**. [Emphasis in original.]

Registration is to occur only after the CAS has investigated an initial report and ensured that the information is "verified" [*C.F.S.A.*, s.71(3)]. The *Guidelines* explain this concept (p.7).

> Alleged abuse is "verified" and reportable to the Register once the Local Director of the Children's Aid Society, on the basis of his Society's investigation and consultation with other professionals (if appropriate) has reasonable grounds to believe that the child is or has been abused. The judgement as to whether to report to the Register is made after the verification procedure is completed. **Verification does not, however, mean that the CAS must obtain proof beyond a reasonable doubt that abuse did occur**. Even if the incident does not result in criminal or civil proceedings against the alleged abuser, or if charges are dismissed, it does not necessarily mean that the report was improper. There frequently will be no external corroboration of the facts upon which the CAS is basing its opinion.
>
> If the evidence is inconclusive with respect to the alleged abuse, the identity of the abuser, or both, the Society should consider carefully all aspects of the situation, including the condition of the child, the circumstances surrounding the incident of alleged abuse, the history of the child and his family, and the potential danger to the child. If the Society has a **reasonable** belief that abuse occurred, and is prepared to defend this in a subsequent expunction proceeding, the report should be submitted to the Register. [Emphasis in original.]

In 1981, in *Ridley v. CAS of Belleville*[2] , an appeal of an expunction decision, Justice Robins of the Ontario Divisional Court interpreted the legislation as requiring that there be "credible evidence supporting the information" in the Register. The judge accepted that this was a lower standard of proof than that applicable in either a civil or a criminal proceeding. Thus, while the legislation specifies that in order to register the CAS must "verify" that abuse has occurred, this has been operationalized as only requiring a "reasonable belief" or "credible evidence" that it has occurred. The terminology is doubtless confusing to some, particularly registered abusers who are notified that their conduct has been "verified" as being abusive, though in reality there has only been "credible evidence" or a "reasonable belief" of abuse.

## Having Charge of a Child

One further aspect of the definition of "abuse" which requires comment has to do with the statutory requirement that the child have a particular relationship with the abuser for registration to occur.

The *C.W.A., 1978* did not expressly require that an abuser have any particular relationship with a child for registration to occur, but there was a policy of focussing on situations where an abuser was a parent or caretaker. The *Guidelines* explained (p.6).

> The Child Welfare Act, 1978, Section 47(2) prohibits anyone having the care, custody, control, or charge of a child from inflicting abuse on that child or permitting that child to suffer abuse. Therefore, not only a parent, but **anyone** who has the responsibility of caring for a child on a short-term or long-term basis can be an alleged abuser. Examples of persons who may fall into this category are baby-sitters, child care workers.
>
> However, persons without formal responsibility for the care of a child may also be identified as alleged abusers. Persons known to a child may be considered to have de facto temporary charge of that child while the child is in their company. An example of persons in this category is a neighbour who invites a child into his house and subsequently harms or sexually molests the child.
>
> The abuse of a child by a person unknown to him (a stranger) is not reportable child abuse as defined by the Act. The most common example of this sort of situation is sexual molestation by a stranger. This kind of occurrence is dealt with under the Criminal Code and placing the molester's name on the Child Abuse Register would serve no useful purpose.
>
> In seeking to prevent further abuse, a question to be asked before deciding on registration is: "will the alleged abuser have the care of children in his personal life or his job?" Children's Aid Societies have the discretion to report "strangers" to the Register if it is believed that other children may be at risk. Again, the context of the abuse is important to consider. [Emphasis in the original]

The definitions found in s.37(2) of the *C.F.S.A.* and set out above limit situations of reportable and registerable abuse to those involving harm inflicted by or with the acquiesence of a "person having charge of a child". Thus abuse by "strangers" is not technically reportable, and should not be registered.

In a 1986 decision, *R. v. Manning and Kates*[3] , Judge Fisher of the Provincial Court (Family Division) stated:

> Clearly the person who had charge of the child is not intended to be the person who has temporary or partial care for short periods of time, but is a parent or the person exercising the parental right.

Thus, in Judge Fisher's view, it was not necessary to report cases to the CAS where abuse was inflicted by "a person having temporary control of a child, such as a school bus driver, school teacher or nursery school personnel". The clear implication of this decision is that the Register should not contain information about abuse inflicted upon a child by any of these persons.

The *Manning and Kates* decision is under appeal by the Crown. It has caused considerable uncertainty about the extent to which CASs should report extra-familial abuse to the Register. While some CASs continue to report extra-familial abuse, others do not. In light of the confusion surrounding this definitional issue, the data on the Register currently underrepresents extra-familial abuse. Regardless of how the *Manning and Kates* decision is ultimately resolved, consideration must be given to the policy issue of the extent to which the Register should contain information about extra-familial abuse. This is undoubtedly related to broader questions about the extent to which CASs should be involved in investigations and service provision when abuse occurs outside the family. In some places in the province, the primary investigative role in extra-familial abuse cases rests with the police, while in others, the CAS has a leading role.

## Registrations

The CAS staff use Form 1 to report each abuse case which they wish to register. The categories of abuse reported on that form are as follows: physical, sexual, emotional and failure to provide. The latter category covers such situations as malnutrition and failure to provide adequate clothing or shelter. Often more than one category of abuse is used to describe a case. Another category called "failure to protect or prevent" is used for cases in which a parent has been aware of the abuse of the child by a partner, but has failed to prevent it. "Failure to protect or prevent" is reported on the same form as that for the principal abuser, and the person who has failed to protect the child is considered to be an abuser as well.

At the request of the Review Team, the Register staff produced several computer analyses of their statistics on abuse cases. Tables were composed which summarize the yearly data about number and age of abusers, child deaths, relationship of abuser to child and categories of abuse classified as single and combined types. Since it is not one of our objectives to describe child abuse trends, only one table is presented here; the remainder can be seen in Appendix D. (It should be noted that coding and verification of data for previous years on the computer is still in process by Register staff, and for this reason table totals vary and some figures may be unreliable.)

Table 5 presents the types of abuse in number and percentages recorded for the past three years. The percentages are based on the total number of children

registered in a year so that the changes in proportion to abuse can be seen over time. The categories overlap since often more than one category is recorded on Form 1. In particular, "emotional abuse" is rarely given as the only type of abuse in a case; it is often combined with sexual abuse. "Failure to provide" and "failure to protect" are usually reported together with "physical abuse".

**TABLE 5: TYPE OF ABUSE REGISTERED IN ONTARIO BY YEAR***

| YEAR | PHYSICAL n | PHYSICAL % | SEXUAL n | SEXUAL % | EMOTIONAL n | EMOTIONAL % | FAILURE TO PROVIDE n | FAILURE TO PROVIDE % | BASE = NO. OF CHILDREN* n |
|---|---|---|---|---|---|---|---|---|---|
| 1979** | 195 | (6l) | 219 | (68) | 71 | (22) | 10 | (3) | 322 |
| 1980 | 428 | (62) | 364 | (53) | 99 | (14) | 23 | (3) | 686 |
| 1981 | 326 | (54) | 497 | (83) | 227 | (37) | 13 | (2) | 601 |
| 1982 | 340 | (50) | 585 | (86) | 294 | (43) | 12 | (2) | 681 |
| 1983 | 493 | (43) | 1,050 | (91) | 646 | (56) | 16 | (1) | 1,151 |
| 1984 | 470 | (30) | 1,370 | (89) | 820 | (53) | 32 | (2) | 1,542 |
| 1985*** | 429 | (21) | 1,830 | (90) | 1,384 | (68) | 8 | (0.4) | 2,041 |
| 1986 | 629 | (29) | 1,723 | (80) | 302 | (14) | 40 | (2) | 2,152 |

* Each type of abuse is based upon the total number of children registered as abused each year. The percentages of all types do not add up to 100 percent because often more than one type is recorded on a Form 1 at one time.

** July 1 to Dec 31, 1979 only.

*** Because of a change in the forms used for reporting, the 1985 figures may not be reliable since the figure for "emotional abuse" is inaccurate.

The total number of reported cases more than tripled between 1980 and 1986, and there has been a marked increase in the number and proportion of registrations in the category of sexual abuse. Public and professional awareness of sexual abuse has grown in the last few years, and this has likely resulted in the dramatic increase in reporting this type of child abuse.

The large majority of abuse cases are intra-familial; of the 1986 cases coded, 77 percent were abusers in the immediate family and 14 percent were relatives outside the family. There has been an increase in extra-familial cases registered in the past few years. The percentage of the coded cases which were extra-familial was nine percent in 1986, up from three percent in 1985 and one percent in 1984.

## Verification and Decision to Register

As explained, before an alleged abuser can be registered, the abuse case must be verified by the CAS; that is there must be "reasonable evidence" that the abuse has taken place (p. 7, *Guidelines*). Two Front Line Workers explained:

> Verification and investigation go hand in hand. If you feel abuse did occur, you verify through the investigation. I do not seek to do something especially for the Register. (Front Line Worker)

> Investigation is gathering facts, looking at the whole picture--I believe the child. Verification is looking at the investigation critically with the Supervisor to decide to report. (Front Line Worker)

Many workers involved in the registration process have limited experience in the child protection field, and training is not currently offered in regard to registration. One-quarter of the Front Line Workers we surveyed had less than two years experience in the child protection field and one-quarter had two or three years experience. One-half of the Front Line Workers had four years or more experience in a CAS. In the past three years, many of the Supervisors (77%) and Front Line Workers (64%) participated in at least one child abuse training program. However, none of these programs contained significant training regarding the registration process.

In 62 percent of the CASs, the procedure for initially verifying that the abuse occurred is followed with the use of a form designed by the individual CAS itself rather than with Form 1. The internal CAS forms are generally of two types. One is a comprehensive checklist (some are up to 12 pages long) dealing with the complete investigation of an abuse case, covering all points within the Ministry's *Standards and Guidelines of Child Abuse Cases under the Child Welfare Act (1978) by the Children's Aid Societies, 1981*; this document (hereafter called *Standards and Guidelines*) contains a short section on the Register. The other type is a one-page form dealing only with the issue of reporting to the Register.

The *C.F.S.A.* s.71(3) appears to require that once CAS staff have verified that abuse has taken place, registration of the perpetrator should occur. However, the practice does not always accord with the legislation. The latest survey of the Ontario Association of Children's Aid Societies (OACAS Survey, January - June, 1986) revealed that 17 CASs (47%) had registered fewer cases than were verified. (Data were missing for 15 CASs.) Twenty-one CASs (of the 35 who gave information) reported differences in 1986 registrations: 10 verified between 11 and 30 abuse cases which were not registered, and 11 verified over 30 cases in which the abuser was not registered.

Comments made during the interviews reveal some reasons for under-reporting to the Register:

> Even in a serious case, if they will accept treatment, we will not register. In one case, the family was very angry. Reacted very negatively. They did

> not want to hear from us anymore; did not want to come in. Up to getting the letter, things had been progressing. Now no hope of effectively treating. (Supervisor)
>
> Before it was necessary to inform alleged abuser of registration [i.e., pre-1979], I was more likely to put their name on. (Front Line Worker)
>
> [There is a] lack of clarity re the mandate; [the CAS] decided they would not be involved in abuse where "strangers" were involved. They lean away from registering; but changing over last year. (Program Supervisor)

Some CASs have what they call an "internal register" or index of abuser names. Two interviewees explained:

> The external Register has not been a big part of our life. The internal register is much more effective, meets our needs from a practical purpose. When you start to see all the variation in reporting, you start to say, "Hey, why are we doing this?" May even question research based on Register information because of variability in reporting. (Supervisor)
>
> Our internal Register is more valuable because we register everything. (Director)

Different categories of CAS staff have different perceptions about who makes the "final decision" on registration, but this may be due to different interpretations of what constitutes the "final decision". Some may believe the term is synonymous with the signing of Form 1, while others refer to the individual or group who are most influential during deliberations about whether to register an individual (see Table 6). The final decision is not perceived by most Front Line Workers or Supervisors as being made by the Executive Director or a Senior Manager, whereas two-thirds of the Executive Directors and Senior Managers stated they make the final decision. Many Front Line Workers (55%) and Supervisors (41%) reported that the decision is made by the designated Child Abuse Team or an informal group serving in the same capacity (almost one-quarter of the Directors/Managers reported the same). A few respondents reported that a Supervisor makes the final decision.

**TABLE 6: WHO MAKES THE FINAL DECISION TO REGISTER ABUSER**
(Percentages of Respondents)*

| FINAL DECISION | RESPONDENTS DIR | SUP | FLW |
|---|---|---|---|
| Supervisor | 8 | 12 | 13 |
| Senior Manager | 18 | 10 | 11 |
| Executive Director | 51 | 31 | 16 |
| Child Abuse Team or shared decision | 22 | 41 | 55 |
| CAS Lawyer | 0 | 1 | 0 |
| Other** (n = 30) | 2 | 4 | 5 |

* DIR = Executive Directors or Senior Managers; SUP = Supervisors; and FLW = Front Line Workers.

** The most common examples were: a team of only Workers and Supervisors, a management team, and a delegate of the Executive Director.

The interviews revealed more shared decision making than was reported in the questionnaires. That is, in all but one CAS, at least the Worker and Supervisor conferred over each decision, and in four a committee or larger group was involved in the decision.

Since the Review Team initially assumed the Executive Director, or at least Senior Manager, was the one to make the final decision about registration, these respondents were asked what the likelihood was of their consulting others if a decision to register someone is difficult. A large majority of them (94%) stated they would very likely consult the Ministry documents (*Standards and Guidelines* and *Guidelines for Reporting to the Register*). A majority (71%) said their child abuse team, and almost half (44%) said the CAS lawyer, and a few (18%) said the Register staff. Over half (64%) said they would be least likely to consult their Program Supervisor. (This was consistent with the Program Supervisors' statement; over half of the 26 were never consulted about a specific decision to register.) It is also clear from information presented in Table 8 (p. 62) that Directors rely very heavily on the assessments of Workers and Supervisors when deciding whether or not to register a case.

## Factors Influencing the Decision to Register

In order to shed more light on the verification and registration process, questionnaire respondents were asked to rate certain factors for their importance in both

verifying and registering an individual. It was clear that there were significant variations in how different child protection staff assessed the importance of different factors in deciding whether or not to register a case.

Table 7 exhibits the aggregate of "very important" responses of the Directors, Supervisors and Front Line Workers on their questionnaires.

**TABLE 7: FACTORS RATED "VERY IMPORTANT" IN DETERMINING THAT AN ABUSE CASE IS VERIFIED AND REGISTERED**
(Percentages of Respondents*)

| FACTORS | VERIFICATION | | | REGISTRATION | | |
|---|---|---|---|---|---|---|
| | DIR | SUP | FLW | DIR | SUP | FLW |
| Statement of child | 97 | 92 | 94 | 83 | 82 | 82 |
| Evidence of a pattern of abuse | 76 | 77 | 85 | 84 | 59 | 64 |
| Extent of medical evidence to support abuse occurred | 62 | 56 | 73 | 66 | 37 | 46 |
| Seriousness of abuse | 50 | 65 | 73 | 77 | 57 | 67 |
| Previous registration of alleged abuser | 42 | 42 | 54 | 62 | 14 | 29 |
| Safety of the child | 51 | 64 | 75 | 43 | 47 | 60 |
| Danger to other children | 49 | 59 | 79 | 52 | 46 | 61 |
| Criminal charges laid against alleged abuser | 24 | 19 | 33 | 28 | 18 | 30 |
| Criminal conviction registered against alleged abuser | 38 | 33 | 37 | 38 | 18 | 24 |
| History of child family | 51 | 39 | 53 | 48 | 36 | 44 |
| Relationship of alleged abuser to child | 36 | 36 | 41 | 23 | 44 | 49 |
| Admission from alleged abuser | 54 | 50 | 55 | 52 | 31 | 42 |
| Source of referral | 5 | 3 | 12 | 3 | 9 | 22 |
| Child has been removed from home | 19 | 19 | 35 | 7 | 14 | 27 |

* DIR = Executive Directors or Senior Managers; SUP = Supervisors; and FLW = Front Line Workers.

For the largest proportion of CAS personnel, the "statement of the child" is of paramount importance in both the verification and the registration of a case. "Evidence of a pattern of abuse" was the next most important factor. One might expect that "danger to other children" would be a very important factor for registration, and this was so for a majority of Workers, though less so for the Supervisors and Directors. "Safety of the child" was very important to a larger proportion of Workers than to other staff in both verification and registration. "Extent of medical evidence" and "seriousness of abuse" were rated very important for verification by a slightly larger proportion of Workers than Directors and Supervisors. In registration, the Directors were more concerned about these two factors along with "previous registration of an alleged abuser".

The standard of proof necessary for a criminal conviction is "proof beyond a reasonable doubt," whereas, as discussed in Chapter I (p. 6), *Ridley v. CAS of Belleville* articulated a standard for registration requiring only "credible evidence" that the abuse is "verified". The purpose of having a lower standard is to permit registration of those who may only be reasonably suspected of abusing a child, but are not proven to be abusers. It is thus not surprising that in deciding whether to register, most CAS staff gave relatively little weight to the fact that criminal charges were laid or the abuser was criminally convicted.

While the interviews indicated it was difficult for staff to generalize about criteria for registering as cases differ from one another, some explained the principles that guided them in verifying and registering an individual who had apparently abused a child:

> The decision to register must accept that the alleged abuser may be acquitted of criminal charges and even defeat a need of protection hearing. The decision to register, if either of above is successful, is clear. However, the decision NOT to register requires an analysis of the whole situation in great detail. Great care must be given to every decision whether to register or not and it must be viewed as a separate, non-prosecutorial function. (CAS Lawyer)

> "Do we think we can justify if an expunction hearing comes up?" is always in the back of your mind. (Supervisor)

> [We] don't verify until after court process. (Front Line Worker)

> If you have a borderline case, a police charge might sway you one way or another. (Director)

> For every three registrations we make, I anguish over two of them. Do we have what we need? You're always thinking about the impact the Register will have on an individual's life and is it worth it. (Supervisor)

CAS personnel were also asked to rate the importance of factors which influence the decision **not** to register an alleged abuser. Table 8 below shows the "very important" responses.

**TABLE 8: FACTORS RATED "VERY IMPORTANT" IN DECISION NOT TO REGISTER AN ALLEGED ABUSER**
(Percentages of Respondents)

| FACTORS | DIR | SUP | FLW |
|---|---|---|---|
| Worker's assessment | NA | 82 | NA |
| Worker's and Supervisor's assessment | 90 | NA | NA |
| Lack of pattern/condition (e.g., isolated bruise) | 71 | 66 | 60 |
| Family's potential to provide safe environment for child | 27 | 52 | 66 |
| Lack of consistency in the child's story | 47 | 31 | 39 |
| Alleged abuser is a minor | 29 | 37 | 30 |
| Criminal charges withdrawn | 4 | 8 | 13 |
| Criminal charges dismissed after trial | 6 | 4 | 11 |
| Possible consequences of a request for expunction | 2 | 3 | 9 |
| Would not hold up in expunctin hearing (e.g., lack of medical evidence) | 29 | 12 | 15 |
| Case worker's therapeutic relationship with family | 10 | 12 | 21 |
| Abuser has undergone counselling/therapy | 6 | 19 | 31 |
| Child protection proceedings dismissed | 19 | 19 | 26 |
| Lack of cooperation from the family | NA | NA | 15 |

NA = Not Asked

It is understandable that the assessment of the Workers and Supervisors is the most important factor for the Director (45 or 90%) and that the assessment of the Worker (who first comes in contact with the case) heavily influences the Supervisors. The interviews also revealed that in practice the assessment of the Front Line Worker is crucial in determining whether a case is registered. In cases where there is no pattern of abuse and the incident is isolated, a majority of respondents in all three groups do not register a person. A factor of great importance which influences a majority of both Front Line Workers and Supervisors (more so than the

Directors) is the family's potential to provide a safe environment for the child. About one-half of the Directors felt this factor is not so important or not at all important. A sizeable proportion of all respondents considered the lack of consistency in the child's story a very important factor in not registering. The fact that the abuser is a minor is a very important factor to about one-third of the respondents. Criminal charges withdrawn or dismissed and the possible consequences of a request for expunction were unimportant or of very little importance to a large majority of the respondents, although withdrawn or dismissed criminal charges did somewhat influence the decision of approximately one-third of the Directors. This confirms that for CASs the criminal trial process is considered quite separate from the registration process.

Approximately one-fifth of the Workers felt the therapeutic relationship with the family was a very important factor in not registering an alleged abuser, and one-half of the Workers indicated they would be affected at least to some extent in their decision not to recommend registration for this reason. This may be because over one-half of them had experienced cases in which registration had adversely affected their relationship with the family (see Table 9). Further, nine percent of the Front Line Workers and 19 percent of the Supervisors actually had not registered at least one case because of a concern about registration detrimentally affecting their relationship with a family.

**TABLE 9: NUMBER OF CASES HANDLED IN LAST TWO YEARS WHERE REGISTRATION ADVERSELY AFFECTED RELATIONSHIP WITH FAMILY**
(Percentages of Respondents)

| ESTIMATED NO. OF CASES | SUPERVISORS | FRONT LINE WORKERS* |
|---|---|---|
| 0 | 21 | 45 |
| 1 - 5 | 18 | 24 |
| 6 - 10 | 28 | 11 |
| 11 + | 33 | 20 |
| Total | 100 | 100 |

* Twenty per cent (116) of the respondents did not answer this question. A few indicated that they had not registered a case, while some said they could not estimate the number of cases they had which were adversely affected.

## Criteria for Registering

A common refrain which ran through the interviews was the degree of discretion in registering an alleged abuser and the need for more specific criteria for registering an individual. Some of the comments about discretion were as follows:

Problems associated with the criteria for registering-- large amount depends on personal judgement; a lot of variation in the reporting patterns; statistics on child abuse will not be very reliable. (Director)

The problem: you want to retain individual discretion, but want clearer guidelines. (Supervisor)

The need for more specificity was expressed by other respondents

If there were a way of clarifying these [neglect cases] by case examples of what they would consider registerable; in terms of sexual abuse, if we believe that it occurred--is this registerable? (Supervisor)

The Register should try to be more specific with what they want us to register, then it may be used more. (Supervisor)

We need precise guidelines. (Front Line Worker)

Definition of abuse needs to be standardized. (Program Supervisor)

The need for a change was demonstrated in more comments.

If I have a sexual abuse case I can do anything--free reign. However, even in a severe physical abuse case my hands are more tied, so many cases are missed because of this aspect. Excruciating mental abuse is not as important as some of the mild forms of sexual abuse, e.g., fondling. I think that this needs to be changed. (CAS Lawyer)

It ticks me off that people will not register abusers. The potential is there for a "hit". Other CASs are too hesitant to register; hold back too much; too restrictive; too wimpy; criteria for registering are too restrictive. If it is not entered on the Register it is totally lost [to another CAS]. (Front Line Worker)

Six cases were given in the questionnaire which required a positive or negative decision about registration on the part of the Workers and Supervisors. The examples are based on actual cases and were as follows:

**Case #1**

Jenny, a six-year old, reported to her mother that her uncle on three or four occasions "put his hand down my pants". In an interview with the child, the social worker determined that the degree of molestation was severe, but did not include intercourse. Police investigation of the uncle, who lived in a nearby town, did not support the laying of a charge due to Jenny's age, inconsistencies in her statement and the lack of corroborative evidence. Jenny's mother, while caught between wanting to believe her daughter and the uncle who denied the accusations, agreed to restrict his access to her.

**Case #2**

Mrs. Jones, while under a great deal of personal stress, lost control while disciplining her two-year-old son. He received extensive bruising over his buttocks, upper legs and left shoulder. Mrs. Jones, feeling a great sense of guilt, wanting help and fearful of further injuries to her child, called the Children's Aid Society. While the bruising was extensive the investigation revealed it was an isolated situation. She was cooperative, and following a short relief placement of her child, was willing to work towards reducing the stress levels in the household and improving her parenting capabilities.

**Case #3**

Angela age 15, disclosed to her teacher that her father had been fondling her for "a number of years." She indicated that while there had never been intercourse he had touched her breasts and genital areas on many occasions. After the investigation began Angela recanted her earlier statements to the social worker. When asked, her father denied that any fondling took place. The Children's Aid Society social worker continued to be worried as the psycho-social information collected during the investigation and assessment tended to support a situation where sexual abuse could occur. In fact, the social worker believed the fondling had occurred in spite of the recantation, the absence of medical evidence and the father's denial. The police, however, discontinued their investigation.

**Case #4**

Thirteen-year-old Carla and her mother had experienced a protracted series of parent-child conflicts. Carla, often by her provocative behaviours, would "bring out the worst" in her mother. On one occasion over Carla's threats to run away, her mother lost her temper during an altercation and struck her several times. Medical evidence supported that the assault took place but fortunately was restricted to bruising on her face, shoulders and forearms. Carla was removed temporarily by the CAS; her mother was charged with assault. She admitted to the assault and received an absolute discharge following her appearance in criminal court. Carla is back with her mother.

**Case #5**

Connie, aged 10, had been molested by her 15-year-old brother on a number of occasions during 1985 and 1986. The extent of the abuse involved digital penetration and masturbation. Connie had been reluctant to tell her parents due to fear of retaliation by her brother and her guilt. However, following disclosure and subsequent investigation, her parents offered appropriate support and protection for Connie. The family, including her brother, became actively involved in a number of recommended treatment programs.

**Case #6**

A 14-year-old girl was alleged to have been molested by her mother's common-law partner. While there was no physical evidence of intercourse present, no corroboration, a denial from the perpetrator, he did voluntarily leave the household at the time of the disclosure. While there

were some inconsistencies in her statement and the girl was not thought to be a strong witness, police did lay a charge.

Table 10 summarizes the recommendations for registering each case.

**TABLE 10: DECISIONS FOR RECOMMENDING THE REGISTRATION IN SIX SAMPLE CASES**
(Percentages of Respondents)*

| SAMPLE CASES** | SUPERVISORS | FRONT LINE WORKERS |
|---|---|---|
| Case #1: Uncle of 6-year old | 80 | 85 |
| Case #2: Mother of 2-year old | 44 | 26 |
| Case #3: Father of 15-year old | 51 | 63 |
| Case #4: Mother of 13-year old | 56 | 58 |
| Case #5: Brother of 10-year old | 65 | 57 |
| Case #6: Mother's partner of 14-year old | 66 | 69 |

* A figure like "51" indicated 51 percent of the respondents recommended registration and 49 per cent did not recommend registration. Thus the closer the figures are to 50, the higher the level of disagreement about registration.

** See details of each case in preceding text.

While it must be appreciated that the questionnaire gave a much briefer factual summary than Workers would face in reality, in every situation but one, there was very substantial disagreement about whether or not the case should be registered. This suggests that there is substantial variability in how the standards for registration are applied. This has serious implications for the reliability of information placed on the Register. It also has implications for the fairness of a process which may result in one individual being identified as an "abuser", while another individual who has committed the same acts may not be so identified because a different Worker or agency carried out the investigation.

## Procedures for Registration

### Forms 1 and 2

Two forms are required to be sent to the Register, Forms 1 and 2 (see Figures 1 and 2). Form 1 is usually completed by the Worker who recommended the registration and signed by the Executive Director or an authorized designate, and provides the information about the abuser(s), parents of the child, the child, background of the incident, and type and degree of abuse, action taken on behalf of

child and current situation. Form 2 provides follow-up information about the status of the case earlier reported on Form 1, and is required to be sent to the Register four months after the initial report and annually thereafter until the case is closed. The worker who completes Form 2 (often not the same worker who prepared Form 1) is required to list the level of condition of "causative factors" of the abuse vis-a-vis the parents, child and environment; for example, the degree of deterioration, improvement or no change of parents' "marital difficulties", "lack of support system" or "physical violence/corporal punishment acceptable" and "behaviour problem/provocative". Details about the services provided are also to be listed on Form 2.

The Directors were asked for their views on the Forms in the questionnaire. Other respondents to the questionnaire were not specifically asked about the forms as it was considered to be more meaningful to address this question during the interviews for a detailed response. Approximately one-half of the Directors approved of the forms while responding "excellent" or "good", one-third indicated they were "fair" and about one-sixth said "poor" (see Table 11). The Front Line Workers during the interviews were very critical about them; this is significant since they are the ones who actually complete them. It is unfortunate that a question directed at Front Line Workers workers was omitted on the questionnaire to compare responses with the Directors'.

**TABLE 11: DIRECTORS' VIEWS OF FORMS 1 AND 2**
(In Percentages)

| | EXCELLENT | GOOD | FAIR | POOR |
|---|---|---|---|---|
| Forms 1 and 2 | 8 | 41 | 35 | 16 |
| 14-day timeframe for Form 1 | 6 | 47 | 18 | 29 |
| Timeframes for Form 2 follow-up | 8 | 61 | 25 | 6 |

Under the *C.F.S.A.* regulations, Form 1 is to be completed within fourteen days of the verification of an abuse case.* Many respondents believed the fourteen day requirement is a useful guideline. One-half of the Front Line Workers indicated they completed the Forms within this period (Table 12). However, most Directors, many of whom sign Form 1 before it is sent, acknowledged that it typically takes longer than two weeks to forward it. The Director of one CAS does not send in a Form 1 until the outcome of the criminal charges and conviction are known. He is one of those who do not approve of the 14-day timeframe, since court cases often take six months or longer.

* O. Reg. 551/85, s.2(2) which provides that an extension of the 14 day limit may be sought from the Ministry Director responsible for the Register; we are not aware of any case where an extension was sought.

**TABLE 12: USUAL TIMEFRAME FOR FORWARDING FORM 1 TO THE REGISTER FROM TIME OF VERIFICATION/DECISION TO REGISTER**

| USUAL TIMEFRAME | DIRECTOR | | WORKER | |
|---|---|---|---|---|
| | n | % | n | % |
| 0 - 2 weeks | 16 | 32 | 236 | 50 |
| 3 - 5 weeks | 22 | 44 | 123 | 26 |
| 6 - 9 weeks | 7 | 14 | 34 | 7 |
| Over 10 weeks | 1 | 2 | 12 | 3 |
| Do Not Know | 4 | 8 | 63 | 14 |

NOTE: Interviews indicated that Workers likely answered this question based on the time it usually took them to complete the form. Some Directors referred to the time the investigation was brought to their attention until they signed and sent a form to the Register.

When time permitted during our interviews, Workers and Supervisors were asked for detailed comments about the Forms. Their views showed discontent with the Forms themselves, particularly Form 2. (See Figures 1 and 2 for the Forms.) Many commented on the lack of feedback when they spend the time and effort to complete them; that is, they see no reports from the Register, either in Register checks or statistical reports, which would show that the purpose of the Forms is satisfied. Until recently agencies often did not complete Form 2. Beginning in 1986, Register staff have more resolutely pursued CASs to complete them; as a result, the Register reports that 80 to 90 percent of Forms 1 have now had at least one Form 2 forwarded.

Three comments made by Front Line Workers about Form 1 illustrate the kind of comments that were made during the interviews:

> **Form 1**
> Severity of abuse (mild, moderate, severe) open to interpretation; insufficient space to adequately describe case. (Front Line Worker)
>
> Mild, moderate, severe abuse--much too subjective; not strict enough; take it out altogether, just say that abuse occurred. The thing is that these classifications are just too vague. If a Worker [from another CAS] phones the Register and gets an affirmative response then he will phone the CAS that registered the abuser and find out the details of the case that way. (Front Line Worker)

Need some exact specifications (e.g., mild, moderate, severe). Court activity--not clear whether criminal court or child welfare court--must be more specific re information on the case. 'Permit or fail to prevent' section--needs to be polished up and made much more specific. How would one define what goes into this section? I get very frustrated with this section, very subjective and 'wishy-washy'. (Front Line Worker)

Form 2 was apparently designed for recording the details of a case so that case management could be monitored both by the Register and by the CAS itself. We found no evidence of the Form being used for this purpose by the Register or by any of the CASs visited. These comments about Form 2 illustrate the CAS opinions heard during the interviews.

**Form 2**

The Forms are very long; one form would do it (because of moving, etc.); Form 2 is an aggravation. (Front Line Worker)

'Causative' factors--difficult to fill in, often put 'unchanged'; 'services provided by for' is much too small an area for information. (Front Line Worker)

Forms need more space for narrative; there is never any feedback once they are submitted; forms give a 'clinical picture'--don't need this, already have file on case; little value in Form 2. (Executive Director)

Follow-up--what is the purpose? No clinical examination; lack of rationale; it's just clerks who are seeing it. It's a joke. (Senior Manager)

Gives an illusion of things happening, e.g., in 'services provided' assumptions made not based on reality; no heading for parent child conflict; how can we judge unwanted child? Should be a section for extra-familial causative factors. (Front Line Worker)

My workers have enough to do . . . we never get anything back. Why doesn't someone publish a report yearly showing us what is happening? . . . if merely for tracking, why follow-up form at all? Let's be honest about it. (Supervisor)

**General Comments**

Very difficult to do forms in cases where police does investigation alone. (Front Line Worker)

Forms not easy to deal with; difficult to read quickly; would be good to simplify because it is 'a very busy form'; complicated; also, a lot of information [with] very little data of any use coming back from Register. Why more and more data requested and less and less coming back? (Executive Director)

## FIGURE 1: FORM 1 FOR REPORTING TO THE CHILD ABUSE REGISTER

Ministry of Community and Social Services
Ontario

**Form 1**
*Child and Family Services Act, 1984*

**Report to Child Abuse Register**

Please print clearly or type

Ministry use only
Jurisdiction no. | File no.

**A. Child** (Corrections to Form 1 to be made on Form 2)
Last name | First name(s) | Sex | Birthdate or approximate age (Y M D)
Also known as

**B. Alleged Abuser(s)** (Corrections to Form 1 to be made on Form 2)
(1) Last name | First name(s) | Sex | Birthdate or approximate age (Y M D)
Also known as
Relationship to child
Mailing address (include postal code)
☐ Father ☐ Mother ☐ C.L. parent
☐ Stepfather ☐ Stepmother ☐ Grandparent
☐ Foster father ☐ Foster mother ☐ Sibling
☐ Uncle ☐ Aunt ☐ Other (specify)

(2) Last name | First name(s) | Sex | Birthdate or approximate age (Y M D)
Also known as
Relationship to child
Mailing address (include postal code)
☐ Father ☐ Mother ☐ C.L. parent
☐ Stepfather ☐ Stepmother ☐ Grandparent
☐ Foster father ☐ Foster mother ☐ Sibling
☐ Uncle ☐ Aunt ☐ Other (specify)

(3) Last name | First name(s) | Sex | Birthdate or approximate age (Y M D)
Also known as
Relationship to child
Mailing address (include postal code)
☐ Father ☐ Mother ☐ C.L. parent
☐ Stepfather ☐ Stepmother ☐ Grandparent
☐ Foster father ☐ Foster mother ☐ Sibling
☐ Uncle ☐ Aunt ☐ Other (specify)

**C. Parents of Child** (if other than above)
Last name | First name(s)
Also known as | Sex | Approx age | Relationship to child
Mailing address (include postal code)
Last name | First name(s)
Also known as | Sex | Approx | Relationship to child
Mailing address (include postal code)
Names and ages of siblings or other children if helpful for tracking

**D. Persons with whom child living at time of incident** (if other than above)
Last name | First name(s) | Sex | Approx age | Relationship to child
Also known as | Mailing address (include postal code)
Last name | First name(s) | Sex | Approx age | Relationship to child
Also known as | Mailing address (include postal code)

**E. Abuse**
Date of incident (Y M D) | Date unknown | Episodic/ongoing From (date) | Reported to CAS (Y M D) | Place of incident ☐ Child's home ☐ Other (specify)

Source of report (do not identify informant)
☐ Victim ☐ Relative ☐ Professional (specify)
☐ Parent ☐ Neighbour/friend ☐ Other (specify)

Did or should parent(s) or caretaker(s) know of and permit or fail to prevent abuse? ☐ No ☐ Yes (elaborate) and also register under Section "B (3)" "Alleged Abusers".

Type of Abuse (Check ANY that apply)
☐ Physical ☐ Emotional ☐ Sexual ☐ Failure to provide

Indicate the overall degree of abuse
☐ Mild ☐ Moderate ☐ Severe

## FIGURE 1 (cont'd)

**ndicators** (Check ANY that apply) ☐ Fatal Injury (date of death)

| | | | | |
|---|---|---|---|---|
| ☐ Abrasions | ☐ Fractures | ☐ Pregnancy | ☐ Withdrawal | ☐ No visible injuries (elaborate) |
| ☐ Cuts | ☐ Burns/Scalding | ☐ Anxiety | ☐ Developmental Delays | |
| ☐ Welts | ☐ Malnutrition | ☐ Depression | ☐ Self destructive aggressive behaviour | |
| ☐ Bruises | ☐ Other physical illness | ☐ Irritation, pain, injury to genital area | | ☐ Other behavioural or physical (specify) |
| ☐ Poisoning (specify) | ☐ Mental, emotional or developmental condition requiring treatment (specify) | ☐ Other indicators of sexual molestation or exploitation (specify) | | |

Brief explanation of occurrence(s) (including a statement describing frequency and duration)

**F. Action taken on behalf of child**

☐ Treated Outside Hospital

Examined by ☐ Physician ☐ Reg. nurse ☐ Social Worker

Hospitalized ☐ For assessment ☐ For treatment ☐ As place of safety

Child apprehended ☐ No ☐ Yes

Other children apprehended ☐ No ☐ Yes Number

CAS request to court

☐ Supervision order Length requested

☐ Society wardship Length requested

☐ Crown wardship

☐ Not yet known

Court hearing

Held on Adjourned to

Disposition (if known)

CAS agreement with decision ☐ No ☐ Yes

**G. Current situation**

Child's present whereabouts

☐ At home ☐ In hospital ☐ In CAS care ☐ Placed elsewhere (specify)

Elaborate if necessary

Alleged abuser(s)

☐ Still in home

☐ Child still in his/her care

☐ Living elsewhere

☐ In hospital (address)

☐ In prison (address)

☐ Whereabouts unknown

☐ Unidentified

Action relating to alleged abuser(s)

Police Involvement

☐ None

☐ Informal contact ☐ Police investigation

☐ Joint investigation with CAS

☐ Charges laid ☐ pending

State charges

Adjourned to (date if known)

Disposition of case ☐ Not yet known

Alleged abuser(s)/parents informed by CAS of report to ☐ Register ☐ Not informed (please elaborate)

Regional and/or Area Office involved? ☐ No ☐ Yes

Additional Comments

Previous CAS involvement with family

☐ No ☐ Yes (specify)

Previous abuse report to Ministry

☐ By this Society ☐ Register (post June 15, 1979)

☐ By another Society (specify) Date

Send letter of notification to alleged abuser ☐ Directly ☐ c/o CAS ☐ Other (specify) In other language (specify)

Reporting Society | Referred to another Society/child welfare authority | Date of referral Y M D

Caseworker(s) (type name(s)) | Signature of Local Director (type name and sign) Date

OR Authorized designate (type name and sign) Date

0458 (11/85) Reverse

## FIGURE 2: FORM 2 FOR REPORTING TO THE CHILD ABUSE REGISTER

Ministry of Community and Social Services
Ontario

**Form 2**
*Child and Family Services Act, 1984*

**Follow-up Report to Child Abuse Register**

Ministry use only

| Jurisdiction no. | File no. |
|---|---|
| | |

Please print clearly or type

☐ 4 month follow-up ☐ Annual Report, Year 1,2,3 ☐ Other ☐ Final Report

**Child** (Corrections to Form 1 to be made on Form 2)

| Last name | First name(s) | Sex | Birthdate or approximate age (y, m, d) |
|---|---|---|---|
| | | | |

Also known as

**Alleged abuser(s)** (Corrections to Form 1 to be made on Form 2)

1. Last name | First name(s) | Sex | Birthdate or approximate age (y, m, d)

Also known as

Mailing address (include postal code)

Relationship to child

☐ Father ☐ Mother ☐ C.L. parent
☐ Stepfather ☐ Stepmother ☐ Grandparent
☐ Foster father ☐ Foster mother ☐ Sibling
☐ Uncle ☐ Aunt ☐ Other (specify)

2. Last name | First name(s) | Sex | Birthdate or approximate age (y, m, d)

Also known as

Mailing address (include postal code)

Relationship to child

☐ Father ☐ Mother ☐ C.L. parent
☐ Stepfather ☐ Stepmother ☐ Grandparent
☐ Foster father ☐ Foster mother ☐ Sibling
☐ Uncle ☐ Aunt ☐ Other (specify)

3. Last name | First name(s) | Sex | Birthdate or approximate age (y, m, d)

Also known as

Mailing address (include postal code)

Relationship to child

☐ Father ☐ Mother ☐ C.L. parent
☐ Stepfather ☐ Stepmother ☐ Grandparent
☐ Foster father ☐ Foster mother ☐ Sibling
☐ Uncle ☐ Aunt ☐ Other (specify)

**Action taken on behalf of child** - update

☐ No change

Child apprehended ☐ No ☐ Yes

Other children apprehended ☐ No ☐ Yes Number

CAS request to court

☐ Supervision order Length requested
☐ Society wardship Length requested
☐ Crown wardship
☐ Not yet known

Court hearing

Held on Adjourned to

Disposition (if known)

CAS agreement with decision ☐ No ☐ Yes

**Current situation** - update

☐ No change

Child's present whereabouts

☐ At home ☐ In hospital ☐ In CAS care ☐ Placed elsewhere (specify)

Elaborate if necessary

Alleged abuser(s)

☐ Still in home
☐ Child still in his/her care
☐ Living elsewhere
☐ In hospital
☐ In prison
☐ Whereabouts unknown
☐ Still unidentified

Action relating to alleged abuser(s)
Police Involvement

☐ None
☐ Informal contact ☐ Police investigation
☐ Joint investigation with CAS
☐ Charges laid ☐ pending

State charges

Adjourned to (date if known)

Disposition of case, specifics of sentence, if applicable

## FIGURE 2 (cont'd)

| Causative factors | Present level of condition | | | | |
|---|---|---|---|---|---|
| | Deterioration | | Improvement | | Unchanged |
| **Parents** | Slight | Significant | Slight | Significant | |
| ☐ heavy child care responsibilities | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ lack of support system | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ marital difficulties | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ lack of knowledge of child care/development | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ physical violence/corporal punishment acceptable | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ different cultural/sub-cultural/religious norms | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ alcohol/drug abuse | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ physical/mental illness | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ personality disorder/sociopathic | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ intellectual limitations | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ abused in childhood | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ emotionally deprived in childhood | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ other | ☐ | ☐ | ☐ | ☐ | ☐ |
| **Child** | | | | | |
| ☐ unwanted | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ premature | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ handicapped | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ behaviour problem/provocative | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ other | ☐ | ☐ | ☐ | ☐ | ☐ |
| **Environment** | | | | | |
| ☐ housing | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ unemployment | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ finances | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ social isolation | ☐ | ☐ | ☐ | ☐ | ☐ |
| ☐ other | ☐ | ☐ | ☐ | ☐ | ☐ |

| Services provided | By | For | Unavailable | Rejected |
|---|---|---|---|---|
| ☐ psychiatric/psychological assessment | | | | |
| ☐ psychiatric treatment | | | | |
| ☐ counselling | | | | |
| ☐ medical treatment | | | | |
| ☐ public health nurse | | | | |
| ☐ parent education courses | | | | |
| ☐ parents anonymous/self help group | | | | |
| ☐ volunteer visitor/parent aide | | | | |
| ☐ professional child care worker | | | | |
| ☐ day care | | | | |
| ☐ homemaker | | | | |
| ☐ material needs/financial assistance | | | | |
| ☐ housing | | | | |
| ☐ employment | | | | |
| ☐ child taken into care | | | | |
| ☐ other | | | | |

Elaborate on any of the above information

Reporting society | Date

Caseworker(s) (type name(s)) | Signature(s)

If a parent or caretaker fails to protect or fails to prevent the abuse, the name is placed in one of the "alleged abuser" spaces on Form 1, and that person is notified about the registration. The question on Form 1, "Did or should parent(s) or caretaker(s) know of and permit or fail to prevent the abuse?" presents some confusion. Register staff explained that often the name is not filled in and it is unclear whether other information on the Form is about the primary abuser or the person who failed to prevent the abuse.

**Form 3**

Form 3 (see Figure 3) has been used by the Register staff to provide a convenient summary of the information from Forms 1 and 2. When a legitimate request is made to see the Register (i.e., by a registrant, or a registrant's lawyer, or a victim's parent) it is a copy of Form 3 which is presented.

## Notification of Registration

The *C.F.S.A.* has requirements for notification of registration.

> s.72(2) Where an entry is made in the register, the Director shall forthwith give written notice to each registered person referred to in the entry indicating that,
>
> (a) the person is identified in the register;
>
> (b) the person or the person's solicitor or agent is entitled to inspect the information in the register that refers to or identifies the person; and
>
> (c) the person is entitled to request that the Director remove the person's name from or otherwise amend the register.

"Registered person" is defined in s.71(1)(c) to mean a "person identified in the register", excluding the child who is the subject of the report and a person who reports the abuse of another. Notification is given to registered abusers, and, in cases where the abuser is a minor, notification of registration is also given to the parents or caretaker of the abuser.

The *Guidelines* specify that notice is normally to be by registered mail, with a copy sent to the reporting CAS. The CAS may request that it deliver the letter in person, in which case the agency must send the Register confirmation of delivery. The *Guidelines* deal with situations where the registered letter is not delivered (CAS to check address, if this is not possible letter is sent by ordinary mail) or where no abuser is identified.

We learned that there was often a delay of several months between the time of completion of an investigation and notification of registration. Register staff explained that delays ensued between when Form 1 arrived at the Register and when the information was fully recorded because of workload intensity. Notification to the abuser that his or her name was placed on the Register, after the Register's receipt

## FIGURE 3: FORM 3 -- SUMMARY OF FORMS 1 AND 2

Ministry of Community and Social Services
Ontario

Form 3
*Child and Family Services Act, 1984*

**Child Abuse Register**

**Child**

| Last name | First name(s) | | | |
|---|---|---|---|---|
| Known as (if applicable) | | Sex | Birthdate or approx. age (y, m, d) | File No. |

**Alleged Abuser**

| Last name | First name(s) | | | Relationship to child |
|---|---|---|---|---|
| Known as (if applicable) | | Sex | Birthdate or approx. age (y, m, d) | |
| Mailing address | | | | |

**Incident**

| Date (y, m, d) | Date Not Known | Episodic/ongoing From (Date) | Date reported to CAS (y, m, d) | Previous abuse report to Ministry ☐ No ☐ Yes | Date(s) (y, m, d) | By |
|---|---|---|---|---|---|---|
| | | | | | | |

**Reporting Society**

| Name of Society | Form 1 signed by: | Registered by: Child Abuse Registrar |
|---|---|---|
| Name(s) of caseworker(s) | Dated (y, m, d) | Date (y, m, d) |

0460 (12/85) Front

No letter sent: ☐ address unknown ☐ abuser unidentified

| Date letter sent (y, m, d) ☐ Direct ☐ c/o CAS ☐ Other | Other language |
|---|---|
| Date letter returned (y, m, d) | Disposition of returned letter |

Inspected as per the *Child and Family Services Act, 1984*, Clause 72(2)(b) by:

| Signature | Date (y, m, d) |
|---|---|
| Witnessed by | |

0460 (12/85) Reverse

of Form 1, was delayed as much as three to four weeks. Added to this delay, some CASs do not send the information to the Register for a considerable time after initial verification. The Register staff informed us that now that the computer system is fully operational, there should not be delays between initial registration and notification.

A few CAS and Register staff reported that notification correspondence is occasionally misdirected and some registrants do not receive the letter. Front Line Workers reported it is especially difficult in extra-familial cases to obtain the correct name and address. It is possible the seven registrants we interviewed who claimed they had not received the Register's letter may not have remembered receiving it. It is a matter of concern if individuals whose names are placed on the Register are not actually notified since they effectively lose the opportunity of seeking expunction.

**CAS Inquiries to Register**

Subsection 2(1) of the *C.F.S.A.* Regulations[4] requires that the CAS contact the Register within three days of beginning an investigation into any report of abuse; subsection 2(3) requires the Register to inform the CAS in such circumstances of whether any person (child or alleged abuser) "has been previously identified in the register, the date of any such prior identification and the society . . . that reported the prior identification."

Recently the Register staff have become stricter about what information is released to a CAS Worker. Previously there had been more discussion of details of a case. Now according to Ministry policy, when a CAS call is received, the Register staff is expected to take the following steps:

1. the CAS caller, usually a Front Line Worker, requests the information about whether the name of a suspected abuser is listed on the Register;

2. the name of the caller and identification of the CAS is requested from the CAS worker; in order to ensure that the request is from a legitimate source, the Register returns the call;

3. a Register clerk returns the call with the negative or positive response and, if the name has been listed, the name of the CAS which reported earlier.

If there is a prior record of abuse, the investigating CAS is expected to contact the agency which made the earlier report to learn more about the history of the case. Many interviewees reported they had never had a "match" in all their years of working with a CAS.

The time lapse between the CAS call and the Register call-back is perceived as a problem by some Front Line Workers. Approximately ten percent of the Front Line Workers expressed a concern on their questionnaire about the delay involved, as did most of those in the ten CASs where we interviewed.

> If I were an intake worker and called the Register, as long as he is not registered it is O.K., but, if he is registered it is crucial. Surely it should not take 48 hours; 3 days later is no good. (Front Line Worker)
>
> But I often feel that it would be much better if we could know immediately. It could alter the flavour of our investigation in terms of being more concerned about child's safety if abuser had been registered previously. (Front Line Worker)
>
> They're fine. Only one [call] where it took too long. (Front Line Worker)
>
> Would like to hear back within minutes, rather than the next day. (Front Line Worker)
>
> It would be helpful to have immediate call backs, so that the information requested would be available to the worker prior to him her going out on the investigation. It would also be helpful to have this service available after hours. (Front Line Worker)

## Hours of Operation

At present, the Register operates on regular week-day hours, from 9 a.m. to 5 p.m. While substantial proportions of the Supervisors (36%), Directors (32%) and MCSS Program Supervisors (38%), believed the hours of operation should be changed, a majority were satisfied with the present hours (Table 13).

**TABLE 13: THE REGISTER'S PRESENT HOURS OF OPERATION ARE APPROPRIATE**
(In Percentages)

| RESPONSE | MCSS PROGRAM SUPERVISORS | CAS DIRECTORS | CAS SUPERVISORS |
|---|---|---|---|
| Strongly Agree | 0 | 6 | 7 |
| Agree | 62 | 62 | 58 |
| Disagree | 38 | 21 | 28 |
| Strongly Disagree | 0 | 11 | 8 |

Front Line Workers were not specifically asked for their views on the issue of the hours of operation, but when asked if they had any concerns about the operation of the Register, only three percent of the Front Line Workers indicated they wanted

the hours expanded. It seemed that very few of those interviewed worked at night, but those who did showed concern:

> CAS and police should have access by computer to the Registry in after hours situations involving emergency decision-making. (Front Line Worker)
>
> If you are responsible for emergency after hours, from Friday p.m. to Monday a.m. is a long time to establish whether you are dealing with a former suspected abuser. (Front Line Worker)
>
> Couldn't care less whether office open on weekend or at night. Might be helpful if you could know if registered within 5 to 10 minutes of calling. (Supervisor)

## Register Checks

At the request of the Review Team, the Register staff recorded the nature of and responses to every call received for five months. Almost all calls were "Register checks" made by CAS Workers. For the five month period, the "match rate", or rate for which a prior record of registration was found as a result of a call, was six percent. Table 14 below displays "Register checks" data over the five months.

**TABLE 14: REGISTER CHECKS - RECORDS OF PRIOR REGISTRATION**
(February 16 - July 14, 1987)

| | N | % |
|---|---|---|
| No record found | 2,137 | 94 |
| Record found | 129 | 6 |
| Total* | 2,266 | 100 |

* Of the Register checks made, 53 or 2% were "urgent" requests.

During a six week period, Register staff recorded a more refined breakdown for the study staff of the characteristics of CAS calls. Table 15 presents the data for this period.

**TABLE 15: REGISTER CHECKS - RECORDS OF PRIOR REGISTRATION**
(June 1 - July 14, 1987)
(Percentages of Total Calls, Total Calls = 778)

| | N | % |
|---|---|---|
| Prior registration by calling agency | 18 | 2.3 |
| Prior registration by another CAS; calling agency was aware of it | 9 | 1.2 |
| Prior registration of which calling agency was unaware | 8 | 1.0 |
| Prior registration (incomplete record of call) | 12 | 1.5 |
| Total | 47 | 6.0 |

CAS workers are required to call the Register upon receiving a report of abuse even in instances where the abuser or child has been previously identified in the Worker's own CAS; 2.3 percent of the calls resulted in "matches" where previous registrations were made by the CAS from which the call was made. "Matches" from calls where the calling agency was already aware of the alleged abuser's registration by another CAS accounted for at least 1.2 percent of all calls. This is a result of the informal communication networks between CASs; one agency will often inform another when it is known that a "high risk" family has moved into the latter's area. In only 1.0 percent (8 cases) was a caller informed about another agency's prior registration of an abuser of which the caller was clearly unaware.

Only 2.2 percent of the clearly identified "Register checks" related to abusers previously registered by a different CAS. Further, it is very significant that in over half of these cases, the caller was already aware of the prior registration by the other CAS.

The low "match" rate is consistent with the low rate for registration of repeat abusers. In the 1980-86 period, 346 (4%) of the 8,817 total registered abusers were repeaters.

Apart from the issues of accuracy and criteria for registration, one may question the utility of a system in which a caller has a very small likelihood, perhaps as low as one percent, of discovering a previously unknown history of child abuse.

## Twenty-Five Year Time Period

Once a name is placed on the Register, s.3(2) of the *C.F.S.A.* Regulations require it to remain there for 25 years unless it is removed through the expunction process. The rationale for the selection of this time period was that 25 years was considered to serve as an appropriate estimate for the maximum number of child-caring years; one can question the validity or significance of this assumption.

Respondents gave their views about the time period of a registration and, as can be seen in Table 16, approximately two-thirds of the CAS staff and about one-half of the MCSS Program Supervisors approved of it.

**TABLE 16: TWENTY-FIVE YEAR TIMEFRAME OF REGISTRATION IS APPROPRIATE**
(In Percentages)

| | MCSS PROGRAM SUPERVISOR | DIRECTOR | SUPERVISOR | FRONT LINE WORKER |
|---|---|---|---|---|
| Yes | 54 | 65 | 59 | 67 |
| No | 46 | 35 | 41 | 33 |

Some of the CAS staff who commented were opposed to removing names, though others were more ambivolent:

> Do not care if they ever take the name off. We should not be squeamish about leaving name on. You do not remove CAS files; why do you want to remove name? (Front Line Worker)

> For abusers and for those who would be involved with children--25 years is O.K. The Register is open to some abuse itself. Other than the expungement hearing, no real recourse. (Front Line Worker)

> Sexual abusers usually do not change, rehabilitation is ineffective. [In] physical abuse, it depends on the category/circumstances of abuse--severity, frequency, etc. (Front Line Worker)

Others who commented appeared to favour a provision for an earlier review of cases:

> There should be a process for review particularly to allow for people to change. (Supervisor)

> Depends on <u>purpose</u> of the Register. If it is just to keep <u>data</u> , could take name off. If it is to track, no, you need it on for a considerable time (Director)

> The twenty-five year registration period seems long in some instances; time should vary with seriousness of abuse; possibly reconsider following therapy. (Front Line Worker)

> Twenty-five years seems like an awfully long time. People do not get that long for murdering people. I would say 15 years and before name is removed perhaps the register could check with person (CAS) who made the registration. (Director)

A real hassle--25-year registration seems very long for an act of an immature person. (Director)

Fifteen of the 27 lawyers who represented registered persons made comments about the twenty-five year period, and fourteen expressed the view that there should be a review process or the time period should be shorter.

## Age of Abusers

There are instances of children as young as 10 having their names placed on the Ontario Register as abusers. Many of the respondents believe that children under 12 should not be registered and that those under 18 should have a lenient "sentence". When asked whether there should be age restrictions, 65 percent of the MCSS Program Supervisors and 74 percent of the CAS Directors favoured some form of restriction on the registration of minors as abusers.

Some respondents who wanted age restrictions offered the following reasons:

Often seen as a harmless register--no deterrent effect--adolescents should not be on. (Supervisor)

Under 18 must have mandatory review on an annual basis with onus to prove why the name should not be removed. Burden is on the agency that registered the abuser. (Program Supervisor)

I believe those under 16 should be registered in only very exceptional circumstances. In many instances, those who are babysitters who have molested are in need of protection themselves. (Program Supervisor)

I don't know if I feel comfortable with arbitrarily picking an age. It would be preferable if a name could be entered when the age difference between the abuser and the abused varies by a certain number of years, etc. (Program Supervisor)

Could lead to excessive negative labelling of children not yet capable of a normal adult judgement, responsibility etc.--favour a therapeutic/ preventative route for children. (Program Supervisor)

Perhaps under 14 no registration and 14-18 five-year limit. (Director)

Children under 12 should not be registered and under 16 should only be registered under exceptional circumstances. (Director)

Children under 12 registered only until their 18th birthday. (Director)

With rare exceptions children under 12 should not be registered. From 12-16 generally children should not be registered but there needs to be room for exercise of judgement in individual cases. From 16-18, I feel

there should be registration until such times as there are adequate treatment facilities and services for juvenile perpetrators. (Director)

Some respondents who approved of registering minors commented as follows:

> Certainly, under 18 they should be. I would think an abuser under 12 should be registered. Yes I guess because I've seen some pretty good abuse by kids under 12. Notwithstanding YOA [Young Offenders Act], etc. (Director)

> No age restrictions . . . All abusers are a potential risk to the community at large. (Program Supervisor)

> I learned from police headquarters that a lot of adolescent were charged but were not put on the Register. . . . There's a reluctance about putting adolescents on the Register. I'm concerned that so few of them end up on the Register. . . . [I] found that 11 percent of the alleged perpetrators were on the Register whereas I saw U.S. data showing the figure as high as 40 percent. (Researcher) [Note that in 1986, according to Register figures, 10 percent of the registrants were under 19 years of age.]

The Child Welfare Committee of the Ontario Medical Association also expressed concerns about the registration of minors as abusers.

> The Committee wants to raise concern about teenage males who have, during the course of babysitting, been involved in inappropriate sexual activity with younger children and have come to the attention of CAS and are being considered for entry onto the Register. There is concern that this kind of activity may be entirely consistent with the evolving state of development in the teenager and yet their entry onto the Child Abuse Register might be successfully pursued without consideration of the developmental aspects of adolescent sexuality.

This concludes the section on the registration process. Now we proceed to a discussion of the expunction process.

## THE EXPUNCTION PROCESS

In this section the expunction process is described and the expunction hearing summaries analyzed; where appropriate, the views of individuals involved in the process will be presented. The section concludes with a discussion of the potential impact of the *Charter of Rights* on the Register and the expunction process.

The expunction process is a mechanism which allows registered persons to have a hearing to determine whether their names should be removed from the Register. Subsection 72(3) of the *Child and Family Services Act* provides that "a registered person . . . may request that the Director [of the Register] remove the person's name or otherwise amend the register." The definition of "registered person" in s.71(1)(c) excludes the child who is a victim of abuse; therefore, only the alleged abuser or parent of a child who has been the victim of abuse can seek expunction.

Subsection 72(4) provides that on receiving a request to remove a name or amend the Register, the Director of the Register may:

(a) grant the request; or

(b) hold a hearing, on ten days notice to the parties, to determine whether to grant or refuse the request.

After receiving a request, the Director of the Register contacts the CAS concerned and informs the agency of the request. The CAS will then informally review the case and may decide that the request should be acceded to. From interviews, we learned that CASs agree to name removal if they believe the original registration was made in error or because they are unwilling to contest the matter at an expunction hearing.

**TABLE 17: EXPUNCTIONS**

| YEAR | REQUESTS | GRANTED WITHOUT A HEARING | HEARINGS | GRANTED BY A HEARING | DENIED BY A HEARING |
|---|---|---|---|---|---|
| 1980 | 49 | 11 | 3 | 1 | 2 |
| 1981 | 48 | 8 | 16 | 7 | 9 |
| 1982 | 45 | 9 | 5 | 0 | 5 |
| 1983 | 59 | 13 | 11 | 2 | 9 |
| 1984 | 76 | 12 | 10 | 0 | 10 |
| 1985 | 95 | 19 | 15 | 5 | 10 |
| 1986 | 127 | 26 | 12 | 4 | 8 |
| Total | 499 (5% of abusers) | 98 (20% of requests) | 72 (14% of requests) | 19 (4% of requests; 26% of hearings) | 53 (74% of hearings) |

Table 17 gives information on expunctions granted with and without hearings. An individual was much more likely to have a name removed on the basis of an infomal CAS review than after a hearing.

Since 1980, the proportion of requests for expunction compared to registered abusers was very small (5%), and relatively few requests resulted in hearings being held (14%). One-quarter of the hearings resulted in expunction orders. In most cases in which an initial request for expunction was made no hearing was held; this is because many applicants do not proceed with their applications. Some 1986 applications have been held in abeyance by lawyers who are waiting for more evidence or the outcome of criminal trials.

The conduct of expunction hearings is governed by s.72 of the *C.F.S.A.*, which provides:

> (5) The Director may authorize another person to hold a hearing and exercise the Director's powers and duties under subsection (8).
>
> (6) The Statutory Powers Procedure Act applies to a hearing and a hearing shall be conducted in accordance with the prescribed practices and procedures.
>
> (7) The parties to a hearing are,
>
> (a) the registered person;
>
> (b) the society that verified the information referring to or identifying the registered person; and
>
> (c) any other person specified by the Director.
>
> (8) Where the Director determines, after holding a hearing, that the information in the register with respect to a registered person is in error or should not be in the register, the Director shall remove the registered person's name from or otherwise amend the register, and may order that the society's records be amended to reflect the Director's decision.
>
> (9) A party to a hearing may appeal the Director's decision to the Divisional Court
>
> (10) A hearing or appeal under this section shall be held in the absence of the public and no media representative shall be permitted to attend.
>
> (11) No person shall publish or make public information that has the effect of identifying a witness at or a participant in a hearing, or a party to a hearing other than a society.
>
> (12) The record of a hearing or appeal under this section shall not be admitted into evidence in any other proceeding except a proceeding under clause 81(1)(d) (confidentiality of register) or clause 81(1)(e) (amendment of society's records).

Subsection 72(6) provides that the *Statutory Powers Procedure Act* governs the conduct of hearings. This provincial statute regulates the operation of many non-judicial tribunals in Ontario and some of its salient provisions will be discussed.

The *Guidelines* provide that the hearing should be kept as "informal as possible". It takes place in a less formal setting than a courtroom, such as a conference room at a local hotel. In the two hearings attended by members of our Research Team, the Hearing Officer was seated at one end of a table with the parties on either side. Participants were able to help themselves to coffee and juice and the Hearing Officer made attempts to explain procedures to the participants. Admittance to the hearing was restricted to the participants and a few authorized observers. Witnesses were usually excluded from the room until it was their turn to give evidence. The *C.F.S.A.* s.72(10) provides that hearings are to be held in the absence of the public and the media, though on consent of all parties the Hearing Officers are usually prepared to admit observers, such as law students.

The hearing proceeds in much the same way as any other administrative hearing--the witnesses who are called are first examined by the party calling them, and then the opposing party has the opportunity to cross-examine. The Hearing Officer occasionally asks a question, primarily to clarify what was said. The initial onus is on the CAS to demonstrate the steps it took to investigate and verify the alleged abuse and explain why it decided to register. The applicant is then given an opportunity to adduce evidence to "show cause" why the name should be expunged, but there is no obligation to testify. Counsel or the parties themselves have an opportunity to make submissions or arguments to the Hearing Officer.

The average hearing takes half a day, though a few have lasted several days. A few weeks after the hearing, the Hearing Officer submits a written decision with reasons to the Director of the Child Abuse Register, and all parties to the hearing receive the final decision and reasons.

## Hearing Officers

While in theory the Director of the Register may conduct an expunction hearing, in practice this task is always delegated to a Hearing Officer under s.72(5) of the *C.F.S.A.* These Officers are not Ministry employees, and are paid a per diem rate for each hearing conducted. From reading the Act, one might think that it is the Hearing Officers who have responsibility for making the ultimate decision about expunction, when actually their decisions are written in the form of "recommendations" to the Director of the Register. In practice, the Director always accepts their recommendations.

The three Hearing Officers who currently preside over hearings in Ontario have no legal training. The background of two of them is in social work and includes employment in the child protection field; both have Master's degrees in Social Work and experience in teaching social work. The third has had many years of experience in recreation, education and the social service field. At the time of

the interview, one Hearing Officer had six years of experience in conducting hearings, another had conducted only two hearings and the third had seven years of experience.

No specific training was offered for the position; the Officers learned by observing a few other expunction hearings. The Hearing Officer with the least experience expressed a need for more formal training before being given the responsibility to conduct a hearing, though she seemed confident that she had performed adequately in the hearings over which she had presided. The more experienced ones felt quite comfortable in their roles. All of the Hearing Officers reported that if they had problems with "legal issues", they obtained advice from lawyers in the Ministry's Legal Services Branch. Increasingly lawyers at expunction hearings are starting to cite the *Charter of Rights*, which has resulted in more frequent consultations with Legal Services.

Thirteen of 21 registrant lawyers (62%) felt Hearing Officers should have legal training (4 of the 13 preferred a Family Court judge). About one-half of the CAS Directors surveyed also preferred to have a legally trained person (20% wanted a Family Court judge) making the decision to expunge a registered abuser's name. In their brief, the Organization of Counsel Acting for CASs (OCCAS) wrote:

> Hearing Officers should be legally trained or at least have a lawyer available as a resource person. The expungement hearings have become increasingly legalistic with complex evidentiary issues and arguments under the Charter of Rights. If these hearings are to become in essence another trial, perhaps consideration should be given to having them heard by a Court.

It seems significant that the lawyers on "both sides" would prefer to have a legally trained person making expunction decisions, perhaps a Family Court judge, and that this position received significant support from CAS Directors. This suggests a level of dissatisfaction with the present process, which was also revealed in lawyers' comments about such matters as the Hearing Officers' conduct of the proceedings.

## Analysis of Expunction Hearing Summaries

The Hearing Offficers' written summaries for 40 expunction hearings which took place in 1984-87 were analyzed. The 40 hearings were all of those decided between January 1, 1984 and the spring of 1987 for which we were able to obtain a summary, and represent virtually all of the hearings held since that date.

Table 18 summarizes information about who attended the 40 hearings and who testified. In only three cases was the child present. In only one case did the child testify; that case involved the sexual molestation of a fourteen-year-old girl. The Hearing Officer commented that the child's evidence was very compelling; expunction was denied even though there had not been enough evidence for police to lay criminal charges.

**TABLE 18: INDIVIDUALS ATTENDING AND TESTIFYING AT FORTY EXPUNCTION HEARINGS, 1984 - 1987**

| | ATTENDED | | TESTIFIED | |
|---|---|---|---|---|
| | n | % | n | % |
| Child | 3 | 8 | 1 | 3 |
| Child's Counsel | 2 | 5 | NA | NA |
| Alleged Abuser (applicant) | 34 | 85 | 20 | 50 |
| Applicant's Counsel | 33 | 83 | NA | NA |
| Police | 15 | 38 | 14 | 35 |
| CAS Worker(s) | 38 | 95 | 36 | 90 |
| CAS Executive Director | 2 | 5 | 1 | 3 |
| CAS's Counsel | 32 | 80 | NA | NA |
| Family of Child | 9 | 23 | 9 | 23 |
| Family of Alleged Abuser | 13 | 33 | 11 | 28 |
| MCSS Staff | 21 | 53 | 0 | 0 |
| Medical Practitioner | 12 | 30 | 12 | 30 |

It is generally felt by CAS staff that children should not be present or testify, as the experience may be traumatic. "It should not make the child relive the terrible experience--ways should be found to present the evidence without testimony" was the opinion of one CAS Executive Director. One Hearing Officer expressed the view that she does not like children to be present; she suggested that having available video or audiotapes of an interview with the child would be helpful in reaching a decision in a hearing--a proposal consistent with some of the recent amendments to the law governing criminal proceedings (Bill C-15). It appears that as yet no use has been made of audio or videotapes in expunction proceedings.

Representation by counsel is a right permitted under the *Statutory Powers Procedure Act (S.P.P.A.)*; in 80 percent of the hearings the CAS was represented, and in 83 percent the applicant had counsel. Financially eligible individuals can have legal counsel paid by the Ontario Legal Aid Plan at an expunction hearing. Very rarely was the child represented by counsel (5%); the Official Guardian is prepared to provide counsel for the child if it seems appropriate.

The alleged abuser, who was present in a large majority (85%) of the hearings, testified in one-half of them.

The *S.P.P.A.* (s.7) states that the hearing may proceed in the absence of the applicant provided that notice of the hearing has been given. In all of the cases where the alleged abuser was absent from the hearing (6 of 40 cases) expunction was denied, though in one case involving a 14-year old abuser, the decision was for possible future expunction. A few applicants were apparently unable to attend their hearings because they were being held in prison.

Police testified in less than half of the 40 hearings. In a number of cases in which officers did not testify, the Hearing Officer noted that the investigating police officer's testimony would have been helpful; in one case the fact that no evidence was provided by the police witness was considered "a serious omission".

In all but two of the hearings examined, CAS workers attended the hearing, and they testified in 90 percent of them. In most cases, the CAS Worker gave the bulk of the testimony for the Society, and read his or her case notes in chronological order for the purpose of describing the "credible evidence".

An Executive Director of a CAS was present in only two out of the total 40 hearings. In one of these, an Executive Director was the only witness to testify at the hearing. In this unusual case the Hearing Officer commented that she felt disadvantaged in not being able to hear other testimony, though expunction was not ordered.

If a staff member was present from the Ministry of Community and Social Services, it was the Program Supervisor, and he or she was strictly an observer.

A medical doctor attended in 30 percent of the cases and usually provided important evidence; in some other cases medical evidence was submitted in the form of a written report from a doctor.

Eight of the 40 hearings involved situations of alleged sexual abuse by the father in the context of parental separation and divorce; expunction was ordered in two of the eight cases. In one situation where a father was accused by his wife of sexually abusing their child, the CAS based its case entirely on hearsay statements, related through a social worker, to prove its case. The Hearing Officer mentioned that he "would have been aided greatly had he been able to have heard this direct testimony from this primary witness". The Hearing Officer commented on the testimony of the social worker: "I find his opinions and conclusions are built on a thin permafrost of facts and are insufficient to support such a weighty structure as the registration of an individual as a child abuser". The Hearing Officer was of the opinion that the child's evidence, related through the social worker, was "so threadbare as to have no credibility". The alleged abuser's name was expunged.

According to the *Standards and Guidelines (1981)*, interviews of both the child and the alleged abuser are supposed to be conducted by the CAS Worker during the investigation. However, one Hearing Officer indicated that interviewing the alleged abuser is too often left up to the police. The Officer went on to comment that

too often social workers hold the assumption that "children do not lie about being sexually assaulted and the investigation can be prejudiced: that is, the alleged abuser can be presumed guilty on the basis of the child's story without an interview".

Many registrants and lawyers who were interviewed or sent letters to the Review Team were deeply troubled by the fact that someone can be denied expunction even after acquittal in criminal court; many of these individuals did not appear to appreciate the distinction between expunction and a criminal trial. Police had investigated 85 percent of the 40 cases where expunction was sought and in most cases there was not enough evidence to lay criminal charges. In only four of the expunction hearings studied was the alleged abuser actually convicted. In four other cases where charges were laid the alleged abuser was acquitted; in three of these, expunction was still denied. The reason this can happen is that the standard of proof and evidentiary rules applied in an expunction hearing are much less strict than those applied in a criminal proceeding. Of the 19 registrant lawyers who gave an opinion, only one approved of the present standard of proof required in an expunction hearing; five wanted the criminal standard, twelve the civil standard (balance of probabilities), and one was uncertain.

In their decisions, Hearing Officers often expressed such views as "the fact that no charges were laid does not constitute a declaration of innocence", and "the fact that the police found insufficient evidence to lay a charge does not mean that the sexual abuse did not occur". These views are consistent with the *Guidelines (1981)* which state:

> Verification does not, however, mean that the C.A.S. must obtain proof beyond a reasonable doubt that abuse did occur. Even if the incident does not result in criminal or civil proceedings against the alleged abuser, or if charges are dismissed, it does not necessarily mean the report was improper. There frequently will be no external corroboration of the facts upon which the CAS is basing its opinion.

However, from the point of view of alleged abusers the result can seem unfair, especially for individuals who have gone through considerable expense and emotional stress in clearing their names in criminal court. One lawyer we interviewed was acting on behalf of an individual who was charged with four counts of sexual abuse and who was acquitted in criminal court on all four charges. Four months after being acquitted, the client found out his name was being placed on the Register; he was seeking expunction as a way to clear his reputation, particularly since he has been a foster parent for the past fifteen years. The lawyer felt it critical that the name of the individual involved who was acquitted of criminal charges be expunged. (We understand that at the time of completion of this report, the name had been expunged.)

One interesting aspect of the hearing decisions studied concerned the relationship between evidence of therapeutic treatment of the alleged abuser and the ultimate decision. Evidence of treatment in the form of counselling was brought out in a number of expunction hearings with reference to the abusive behaviour not

occurring again as a result. In two hearings, held in 1985 and 1986, this seemed crucial for obtaining expunction; expunction was ordered on the basis of clear evidence of the positive results of counselling.

However, in another hearing expunction was denied despite the fact that the woman placed on the register had attended numerous counselling sessions; the Hearing Officer concluded that there "is no assurance that the counselling will continue or that counselling will result in fundamental change in methods of discipline". In this case a mother and stepfather had been disciplining their teenage daughter with belts and whips over the past two years. They admitted most of the allegations, but felt justified in administering punishment which they felt was not unduly harsh from the perspective of their Haitian culture.

While the fact that a person receives therapy or counselling after an incident of alleged abuse should not be relevant to registration or expunction, when asked what factors influence a decision not to register an individual in the first place, close to one-half of the Directors, Supervisors and Front Line Workers stated that the counselling or therapy undergone by the alleged abuser influenced their initial decision to register.

In seven of the forty expunction hearings studied, we found that an order was made that a registered person might again seek expunction in a stipulated time period, usually three years. If counselling or treatment was successful, future expunction was held out as a possibility. These decisions reflect the feeling of the Hearing Officers that for some abusers the 25 year duration of registration is too long. A number of cases where the prospect of future expunction was suggested involved minors. However, because the present legislative scheme does not allow for future expunction, or the removal of a name on the ground of "rehabilitation", the Director of the Register ordered this practice to cease.

## The Expunction Hearing: Perceptions of the Process

Procedures for expunction requests were judged favourably by 44 percent of the Directors, and the specific procedures employed in the hearings were approved by 39 percent of them (see Table 19.)

**TABLE 19: APPROPRIATENESS OF PROCEDURES OF THE CHILD ABUSE REGISTER**
(Directors' Responses: in Percentages)

| PROCEDURES | EXCELLENT | GOOD | FAIR | POOR |
|---|---|---|---|---|
| Criteria for registration (i.e., reasonable evidence of verified abuse) | 6 | 29 | 33 | 31 |
| Procedures for expunction requests | 9 | 35 | 40 | 16 |
| Procedures for expunction hearings | 7 | 32 | 34 | 27 |

The brief received from the Organization of Counsel Acting for Children's Aid Societies (OCCAS) commented:

> However, it would appear that we are rapidly moving toward a system where the expungement hearing process becomes yet another protection hearing, requiring extensive evidence, lengthy hearings with a tremendous time commitment by CAS personnel and their lawyers, and it would appear from the J.B. case, yet another forum in which the child must be put through the trauma of testifying.

Front Line Workers interviewed had a sense of uncertainty about their role in an expunction hearing, and those who had experienced a hearing felt uncomfortable giving their evidence. One Executive Director was upset that:

> While the emphasis at a hearing is on the investigation and verification process, testimony is undertaken by staff who are trained as case workers and not investigators.

Another commented:

> The expunction process is adversarial in that CAS staff are made to feel like prosecutors of the abuser rather than the helper of the child and family.

While CAS staff generally felt that the expunction proceedings were not unfair, lawyers representing alleged abusers were more critical. Even though two-thirds of them felt the hearing allowed them a fair opportunity to put forth their client's position, almost three-quarters of them expressed concerns about aspects of the process. The comments of these lawyers included:

> It's a joke. I was two hours late for the hearing because of a snowstorm . . . . My client had not arrived yet either, but the evidence was given anyway.

> It's a ridiculous exercise in futility.

> The Hearing Officer interfered with my line of questioning.

> People were permitted to be at the hearing who should not have been permitted (i.e., ex-employer). . . . It's supposed to be private and confidential.

> Purpose of the hearing was not to see if the abuser should be on [the Register] now but to see if the CAS had a case.

> There was insufficient evidence. . . . Some was introduced that should not have been.

## Delay in Holding A Hearing

One issue which emerged in interviews was a concern about the long time periods which sometimes elapsed between initial registration and an expunction hearing. The OCCAS (CAS Lawyers) stated:

> There should be relatively short limitation periods imposed as follows:
>
> (a) On the Ministry to advise the verified abuser of the registration and the right to an expungement hearing;
>
> (b) On the verified abuser to request an expungement hearing after notification.
>
> There is presently no limitation period and there have been instances where an expungement hearing was requested many months or years after the registration, which may present great difficulties in locating the required witnesses for the hearing.

In some cases there were quite lengthy delays after an application was made and before a hearing was held. On some occasions, there appeared to be difficulty in finding a Hearing Officer available to conduct a hearing. In a few situations, delay was the result of an applicant being in custody; apparently custodial officials are not prepared to allow an individual to be released, even under escort, to attend an expunction hearing. The problem of delay was understandably the subject of unfavourable comment by individuals and lawyers involved in those cases.

## Expunction Hearings: Hearsay Evidence

Unlike a trial in criminal court, there is typically extensive use of "hearsay" evidence in an expunction hearing. That is, a witness at a hearing will relate what another person (the so-called declarant) said for the purpose of convincing the Hearing Officer of the truth of what the declarant is reported to have said. One of the most commonly admitted forms of hearsay in an expunction hearing is to have a CAS social worker testify about what the child, who is the alleged victim of abuse, said about the incident, without having the child as a witness. This process undoubtedly serves to protect a child from the trauma of testifying, but raises questions about the fairness of the procedure to the alleged abuser. The alleged abuser is denied the opportunity of cross-examining the child. The Hearing Officer is denied the opportunity of considering nuances, potential inconsistencies, tone of voice and demeanour of the child. In a criminal trial concerning abuse, such hearsay evidence would almost always be inadmissible. In a civil child protection proceeding, there is more scope for the admission of hearsay, and findings of abuse are often made without a child testifying. However, judges in child protection proceedings are generally more cautious about relying on hearsay evidence than Hearing Officers in an expunction proceeding.

The authority for the admission of hearsay evidence is found in the *Statutory Powers Procedure Act*:

> s.15 (1) . . . a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
>
> (a) any oral testimony; and
>
> (b) any document or other thing, relevant to the subject matter of the proceedings and may act on such evidence, but the tribunal may exclude anything unduly repetitious.
>
> (2) Nothing is admissible in evidence at a hearing,
>
> (a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or
>
> (b) that is inadmissible by the statute under which the proceedings arise or any other stature.

One Hearing Officer explained in the interview that "there are seldom witnesses to sexual molestations. If registration had to rely on witnesses, few names would be registered". In one decision in which expunction was ordered on the basis of CAS reliance on hearsay evidence for their case, the same Hearing Officer said: "While I recognize in expunction hearings hearsay evidence is admissible, the weight [placed on it] varies with the distance from the source."

In the interviews, the other two Hearing Officers acknowledged that they also will admit hearsay evidence, but will give less weight if it is "second hand hearsay" (i.e., a witness relating what a second person stated a third had said). One Hearing Officer also indicated that the amount of weight placed on the hearsay evidence depended upon its source. Hearsay related by a parent or an abuser was not considered as reliable as hearsay related by a professional, like a social worker.

A recent appeal from a Hearing Officer's decision to the Ontario Divisional Court dealt with the issue of reliance on hearsay evidence at an expunction hearing. In *J.B. v. Catholic C.A.S. of Metropolitan Toronto* a man's name had been placed on the Register for having allegedly sexually molested the 12 year old daughter of his girlfriend. No criminal charges were laid, and expunction was sought. At the expunction hearing, the only CAS witness was the social worker, who related the child's original statements about the alleged incident. The girl was not called as a witness, apparently because she had "changed her story". The worker evidently still believed the original allegation.[5] The alleged abuser testified at the expunction hearing, and flatly denied the allegation. Justice Craig overturned the Hearing Officer's decision, and ordered the name expunged:

> Had she been called as a witness, it seems to me that it would be almost impossible for the Hearing Officer to make a finding against the appellant upon hearsay evidence in the face of a denial of sexual abuse by the

> alleged victim and the appellant. Because of s.15(1) of the Statutory Powers Procedure Act the Hearing Officer was able to rely upon hearsay evidence. In so doing he stated in part, "I believe the child's first account of what happened." He did not give any reasons why he rejected the denial evidence of the appellant J.B.
>
> It is our view that in the circumstances mentioned, where the appellant was denied the right to cross-examine the alleged victim, the admission of the hearsay evidence did amount to a denial of natural justice; the hearing in this case fell below the minimum requirement of fairness. The appellant was not convicted of sexual molestation but nevertheless it is a grievous stigma to have one's name in the Child Abuse Register where it may remain for 25 years.[6]

The situation in *J.B. v. Catholic C.A.S.* involved an older child, who could have testified, and whose testimony would have clearly exonerated the alleged abuser. One can appreciate why the Hearing Officer's decision was characterized as a "denial of natural justice"; it might also have been viewed as a decision made against the weight of the evidence presented. This case does not stand for the proposition that the CAS can never base its case totally upon hearsay evidence. If a child is young and easily traumatized, and is sticking by the original story, hearsay evidence alone may suffice, though ideally it should be related to the Hearing Officer by more than one witness.

The decision in the *J.B.* case at least indicates that Hearing Officers must exercise care when weighing hearsay evidence and should be cautious about relying on the opinion of a single CAS worker that abuse has occurred. The decision also points to the desirability of having expunction hearings conducted by individuals with substantial experience in the conduct of hearings, the rules of due process and the laws of evidence.

## The Register and The Charter of Rights

Litigation from other jurisdictions concerning the constitutional validity of child abuse registers was discussed in Chapter II. As noted, there is a strong argument that placing an individual's name on a register infringes upon "liberty and security of the person", and thus must be done "in accordance with the principles of fundamental justice" in order to satisfy s.7 of the *Charter of Rights*.

American caselaw suggests that having a register is constitutionally valid, provided an individual identified as an abuser is given notice of registration and an opportunity to have an independent tribunal consider the validity of registration. The tribunal need not be a court, and need not follow all the rules of evidence applicable in the courts. It must, however, conduct a fair hearing, and if the effect of registration is to deny an individual employment opportunities, there must be a finding of abuse on at least the civil standard of proof and not merely a suspicion of abuse. Canadian decisions from Nova Scotia and Manitoba seem generally consistent with the American approach.

There is one Ontario decision dealing with this issue, and other cases are now before the courts. In *Morisseau v. Director of the Child Abuse Register*[7] , the operator of a group home for adolescents was alleged to have sexually exploited a female resident. He was acquitted in criminal court, in a judgment which made clear that the judge thought "there was no substance whatsoever to the charge". He was nevertheless placed on the Register, and lost his license to operate his group home. The lawyer representing the group home operator suggested that registration affected the loss of the licence. The operator did not, however, seek expunction, but rather made an application directly to the courts challenging the Register's validity under the *Charter of Rights*. The initial application to the courts was dismissed on procedural grounds.

It is important to observe that if a person's livelihood may be affected by registration, the courts are likely to impose a higher standard of proof on constitutional grounds. "Credible evidence" may be constitutionally valid for a confidential register used only to help identify abused children, but it almost certainly is not sufficient if a person's livelihood is at stake. While the Ontario Register is not intended to be used for employment screening, as discussed later in this report (p. 102), there has been some use of the Register for this purpose.

It is interesting to note that in one expunction hearing, held in 1985, a school board employee sought to have his name removed after he had been reported to have sexually abused a student. We do not know how the employer discovered the man's name was on the Register, but the employee was told by school authorities that if his name were not removed, his employment would be terminated. The Hearing Officer observed that "while the community needs safeguards to ensure that people who work closely with children in any capacity are not abusers, the Register was not intended to be used as a public screen." The Officer ordered the name removed, but did not apply the usual standard of "credible evidence" set out in *Ridley v. C.A.S. of Belleville*.

> Justice Robins has been cited often in support of the lesser degree of proof. However, if the Register is to be used by agencies to screen individuals for their suitability to work with children, the anonymity is no longer guaranteed and a greater burden of proof must be applied.

This case illustrates the need to clarify the use to be made of the Register and to provide greater safeguards if more serious consequences are attached to registration.

## REGISTRANTS

The views and perceptions of registered persons were considered important to expand our perspective on the registration process. These views, however, are not necessarily representaive of all those registered since the respondents contacted us voluntarily, for the most part in response to the letter sent via the CAS.

In this section we describe who contacted us and what their views were of the registration process. We describe four registrants in order to show different types of experiences and attitudes about the process, and present views on the impact of registration.

## Description of The Registrants

A total of 62 registrants contacted the Review Team--almost one-half by telephone (resulting in 31 phone interviews and 1 personal interview), 24 through questionnaires and six via letters. Forty-six were males, six were females and ten were not identified as to gender. One was the mother of a fifteen-year-old boy who was a registered abuser.

Although the interviews were structured, they were conducted in an informal, open-ended manner, and direct questions on sensitive issues such as the type of abuse and criminal charges were not asked. Also, questionnaire items were necessarily restricted and letters did not expand on many items. As a result, different types of information were learned from different respondents. Table 20 summarizes some of the information received from the registrants.

**TABLE 20: INFORMATION FROM REGISTERED ABUSERS**

| REGISTRANT RESPONDENTS | CRIMINAL CHARGES | | LETTER REC'D FROM REGISTER | | CONTACTED BY CAS | | PERCEPTION OF REGISTRATION | |
|---|---|---|---|---|---|---|---|---|
| | Yes | No | Yes | No | Yes | No | FAIR | UNFAIR |
| Interviews (n = 32) | 13* | 8 | 25 | 7 | 10 | 20 | 5 | 18 |
| Questionnaires (n = 24) | 5** | - | NA | | 15 | 9 | 4 | 10 |
| Letters (n = 6) | 2*** | 3 | 1 | 1 | 3 | 1 | - | 6 |
| Total (n = 62) | 20 | 11 | 26 | 8 | 28 | 30 | 9 | 34 |

* Four were convicted. ***None was convicted.
** One was convicted.

Thirty of the respondents indicated without being prompted what type of abuse they were alleged to have committed. Nineteen of the cases involved sexual abuse, ten physical and one failure to prevent. Of the cases for which details were given, twenty-one were intra-familial and ten were extra-familial.

Of the registrants heard from, only five of the 20 registrants who indicated they had been charged said they were convicted.

## Registrant Views on Registration Process

As indicated in Table 20, most of the interviewed registrants remembered receiving the notice of registration from the Register. However, eight reported they had not received a letter and five of these persons stated that our contact with them was the first time that they were aware of being registered, although all were aware that they had been investigated for alleged child abuse. About half of those responding said they had not been contacted by the CAS about their registration. A few indicated that the CAS worker had discouraged them from applying for expunction. Two registrants stated that they were told by case workers that the chances of getting their names removed were remote, and another registrant reported that he was told by a CAS worker that: "It will put you in the poor house and even then you won't win".

Only four of the 25 registrants who knew about expunction hearings actually had a hearing; 13 were planning to have one and eight of them had not asked for an expunction hearing. Nineteen more claimed they were not informed about the possibility of a hearing. It may be that some of them had not read or did not recall reading the letter from the Register. (Letters from the Register indicate there is a right to seek expunction.)

Twelve registrants had comments relating to the timing of the registration. Four complained of the long period between the actual incident and registration; in some cases it was up to one year. Three of the registrants were upset at being registered either before being charged or just after the preliminary hearing. Although interviewees were not questioned directly about their circumstances, five of them indicated that the CAS investigation and subsequent registration was connected with a situation of separation or divorce.

Where possible, on the basis of the comments and tone of the communication, the Review Team classified the registrants' overall perception of the registration process as "fair" or "unfair". It was apparent that a substantial majority of registrants (34 of 43) perceived that the process was unfair. Only one of the 17 persons who was charged and convicted in criminal court felt that registration was unfair. Conversely, among the nine who felt registration was fair, all of the three who had been charged were convicted.

Many interviewees did not fully distinguish between the effects of the Register and those of the overall experience with the CAS which lead to the registration.

## Profiles of Four Registrants

In order to appreciate the variety and complexity of registered persons' experiences in being identified as child abusers, profiles of four registrants are presented.

**Registrant A** was prosecuted in criminal court for sexually abusing his stepdaughter, but the charges were dismissed. He claimed the allegations were made against him so that his ex-wife would receive more alimony. Six months after the charges were dropped and after a confrontation with a Supervisor at the CAS, his name was put on the Register. He applied for expunction, even though people advised him that it would be expensive and he would not succeed. It took five months for the Register to reply, and the hearing has yet to take place. Even though the stepdaughter has recanted her story several times, the CAS would not remove his name. He maintained the events have cost him two jobs, and caused mental stress and marital breakdown. Finally, he said the Register does not discourage abuse because "if it's going to be done it'll be done", and added that "if I saw abuse taking place, I wouldn't report it".

**Registrant B** was a woman who was accused of physically abusing her 14-year old son. She was registered as an abuser and then criminal charges were laid. She stated that she will attempt to get her name removed from the Register once the criminal court proceedings are over. This woman does volunteer work at a local public school, and claimed that although the school officials and neighbours support her, the CAS did not listen to her version of the alleged events. She said that being registered "has made life impossible around here with the CAS coming every week to check the youngest son for abuse". She stated: "The Register is misused by the CAS. If they were restricted to placing the names of those who are convicted of child abuse, they would serve the community in a much more worthwhile way . . . [the Register] makes it look like they [CAS] are doing a good job, when they are doing nothing of the sort".

**Registrant C** admitted to sexually abusing his girl friend's three-year old daughter. He was registered after a child protection hearing in Family Court resulted in a supervision order, but was not charged by police. This man said he was "sick to death with courtrooms and lawyers . . . but I would like my name off [the Register]". His family was unaware of the abuse, but "it's in the back of my mind--my name is on the list". He believes the Register works to discourage people from abusing children: "In my case it worked as a deterrent. Once your name is on the list you think: Gee, my name could get out . . . could lead to blackmail . . . could lead to anything . . . I don't want any more trouble. . . . It's good that way". He said that treatment had helped him and concluded that, "I have learned the hard way. It won't happen again."

**Registrant D** was a 15-year old boy who was accused of sexually assaulting two young girls he was babysitting when he was 14. (The interview was with his mother.) Shortly thereafter he was registered. The family was discouraged by the CAS Worker from applying for expunction, and only when they discovered that they could bypass the CAS and contact the Register directly did they decide to apply. The mother claimed that their lawyer did not seem to understand enough about the Register and had given up supporting their case. The mother felt that the Register does not deter abuse because "it's a sickness, they [alleged abusers] need help". Finally, she added that "all the Register is doing is screwing up my child's life and adding to the tension in this house."

## Impact of Registration

Many registrants felt the fact of registration itself did not put severe pressure on them, but was merely part of a difficult process involving such steps as police investigation, criminal charges, custody hearings, and CAS investigation. The effect of registration varied substantially from case to case.

Eleven registered persons claimed registration had no impact on their lives, yet it was evident during the interviews that most of these people had suffered and were still suffering some distress. One maintained that "it only happened once..... life stays the same". Another said that he does not feel threatened in having his name on the Register because it is supposed to be confidential and registration would not result in his losing his job.

Nineteen registrants reported that registration had had a strong impact on their lives. One was concerned about losing his job in a group home. Another said registration had caused "irreparable damage" to his life. Other comments about registration include: "It is . . . life-destroying"; "A miscarriage of justice"; and, "It's a nightmare . . . It intimidated me." A mother's comments about how the registration of her son affected his life were revealing: "[His] self-esteem lowered . . . he used to be so polite but has changed immensely . . . now his attitude is 'screw the world'. . . ."

During the interviews, 26 registrants expressed negative feelings towards the local CAS, and 13 of these commented directly on the treatment they received from the CAS and its workers. Their comments included: "I was considered less than scum [by the CAS social worker]", and "I got myself trapped by the CAS." Many expressed frustration in communicating their side of the story to the CAS. One even said that he visited another CAS to appeal for help because the local CAS refused to talk to his new wife or his step-children about the case they were investigating. Two registrants were indignant over the CAS's treatment of their families while the investigation was taking place. One remarked that her other children were "subjected to ridicule and condemnation by the CAS for telling them I was innocent." One person commented that the "CAS's power and what they do with it is an irritating, disgusting, dirty thing." His further comment is typical of concerns in this area: "How can the CAS find you guilty when the criminal investigation can't find enough evidence to prove guilt?"

## The Register as a Deterrent

Sixteen of the registrants believed the Register deters abuse of children. One said: "[The] Register makes them think about it and they won't do it again." Others commented, however, that they had fears of being wrongly accused of abuse in the future. One said: "It scares me, and I'm innocent."

Of the seventeen who denied the Register deters abuse, most were convinced that the problem of abuse goes much deeper, and that the mere presence of a Register does nothing to prevent abuse from happening in the first place.

## ACCESS TO THE REGISTER

The legislation specifies that disclosure of the information contained in the Register to unauthorized individuals or groups is prohibited.

Subsections 71(6) to (12) of the *C.F.S.A.* state:

> (6) Despite the provisions of any other Act, no person shall inspect, remove, alter or permit the inspection, removal or alteration of information maintained in the register, or disclosure of information that the person obtained from the register, except as this section authorizes.
>
> (7) A person who is,
>
> (a) a coroner, or a legally qualified medical practitioner or peace officer authorized in writing by a coroner, acting in connection with an investigation or inquest under the Coroners Act; or
>
> (b) the Official Guardian or the Official Guardian's authorized agent,
>
> may inspect, remove and disclose information in the register in accordance with his or her authority.
>
> (8) The Minister or the Director may permit,
>
> (a) a person who is employed by,
>
> (i) the Ministry,
>
> (ii) a society, or
>
> (iii) a recognized child protection agency outside Ontario; or
>
> (b) a person who is providing or proposes to provide counselling or treatment to a registered person,
>
> to inspect and remove information in the register and to disclose the information to a person referred to in subsection (7) or to another person referred to in this subsection, subject to such terms and conditions as the Director may impose.
>
> (9) The Minister or the Director may disclose information in the register to a person referred to in subsection (7) or (8).

(10) A person who is engaged in research may, with the Director's written approval, inspect and use the information in the register, but shall not,

(a) use or communicate the information for any purpose except research, academic pursuits or the compilation of statistical data; or

(b) communicate any information that may have the effect of identifying a person named in the register.

(11) A child, a registered person or the child's or registered person's solicitor or agent may inspect only the information in the register that refers to the child or registered person.

(12) A legally qualified medical practitioner may, with the Director's written approval, inspect the information in the register that is specified by the Director.

By far the most frequent users of the Register are CAS staff. In the period of February 16, 1987 to July 14, 1987, 92 percent of 2,580 telephone calls to the Register for information were from CAS staff. Ninety-five percent of the CAS calls were to check names; the rest of their calls were for advice and information about registration and expunction. Ministry staff (e.g., Program Supervisors) made about one percent of the calls to the Register, almost all for information about expunction. The other calls to the Register were from researchers or students (1%), registered abusers (1.5%), lawyers (2.5%), and others (2%) such as interested individuals, media and government officials. Although in theory doctors and treatment personnel may seek access to the Register under ss.71(8) and (12), they rarely, if ever, request it.

Of the twelve coroners we contacted, only one had used the Register, and it had not actually been useful in that case. Six coroners commented that the Register might be useful in an investigation of a child abuse death.

Lawyers from the Official Guardian's Office, who act for children in child protection and custody proceedings, make use of the Register on very few occasions. However, in our meeting with the Official Guardian, he emphasized the utility of the Register for exceptional cases. When the Official Guardian and CAS are taking different positions about the risk of a particular plan for a child, the Register can provide invaluable information.

The *C.F.S.A.* provides registered persons and lawyers acting on their behalf the right of access to Register information about themselves, and they occasionally exercise this right, primarily as part of the process of seeking expunction.

Researchers may have access to the Register with the written approval of the Director of the Register. Almost all of the research requests that have been made to the Register involve the use of statistical information and have not required ac-

cess to confidential information; they usually come from students or journalists. Requests by bona fide researchers for access to confidential data are granted after the Register staff verify their credentials. We are only aware of three researchers who have sought access to the confidential information on the Register since 1979.

## Screening

While the obvious intent of the *C.F.S.A.* is to ensure that the Register is confidential and the use of personal information from it is strictly limited, the legislation is not as explicit as it might be. The statute does not, for example, specify the use which Ministry or CAS staff may make of information received from the Register under s.71(8), except that they are prohibited from sharing it with individuals other than those specified in the Act. Use of the Register for screening by outside agencies might arguably be justified on the basis that the Act only prohibits disclosure of information about an individual whose name appears on the Register, and does not expressly prohibit revealing the fact that an individual's name does not appear on the Register.

In view of the lack of clarity in the statute and the obvious utility of the Register for screening those who work in positions of responsibility with children, it is scarcely surprising that the Register has been used for this purpose. Barry Napier[8] reported that quite extensive use was being made of the Register for screening. He reported that in the January 1 to August 31, 1985 period, 8 percent of the 5,616 calls to the Register were by CASs checking prospective fosterparents, 5 percent concerned CAS checks of prospective adoptive parents, and 16 percent involved checks by CASs for a range of purposes, including screening of volunteers and employees; it seems that many of these latter checks were conducted by CASs on behalf of other child-serving agencies.

While use of the Register for screening purposes may seem justified as one means of protecting children, it raises very serious civil liberties concerns because Register information is not based on confirmation of abuse. About the time that the Ministry took over direct responsibility for the Register from the Ontario Centre for the Prevention of Child Abuse in 1986, the policy on screening dramatically changed. The present policy precludes any use of the Register for screening by CASs or others. Register staff do mention this to CAS callers, and will refuse to honour CAS requests for information which are evidently intended to be used for screening.

Seventeen of the 36 CAS Directors (47%) who responded to the question claimed that in the last two years (i.e., Spring, 1985 to Spring, 1987) there had been some screening of their own volunteers, employees or foster parents using the Register, and 16 (46%) of those responding reported that outside agencies/organizations had requested screening of potential employees and volunteers (seven had received six or more such requests). Only nine percent of the Front Line Workers reported having used the Register during the past two years for screening potential foster parents or CAS volunteers. Two Supervisors (8% of

those receiving requests) and 5 Front Line Workers (20% of those receiving requests) reported they complied with the request and called the Register for outside agencies and organizations. Further, in an interview, one Ministry staff member admitted to having occasionally made use of the Register for screening. Though presently not an authorized use, this practice is not clearly illegal.

Table 21 shows the percentage of MCSS Program Supervisors and CAS Directors and Supervisors who favour giving CASs and outside agencies or groups access to Register information for screening purposes. An overwhelming majority of these respondents favour access for screening CAS employees, volunteers and foster and adoptive parents, while fewer, although still a majority, favour allowing access for screening of individuals in positions of responsibility for children in outside agencies. All but one of the ten Directors interviewed favoured access for screening of CAS employees, volunteers and foster and adoptive parents (the one was uncertain), whereas six favoured access for outside agencies (two did not favour such access and two were uncertain).

**TABLE 21: FAVOUR USING REGISTER FOR SCREENING PARTICULAR POSITIONS OF RESPONSIBILITY FOR CHILDREN**
(Percentages of Respondents)

| FAVOUR SCREENING FOR: | MCSS PROGRAM SUPERVISORS | DIRECTORS | SUPERVISORS |
|---|---|---|---|
| CAS employees | 85 | 90 | 96 |
| CAS volunteers | 77 | 88 | 85 |
| Foster and adoptive parents | 81 | 90 | 86 |
| Employees volunteers of other child serving agencies, school boards | 69 | 61 | 78 |
| Other (e.g., Block Parents, police, doctors) | 4 | 23 | 12 |

A Director who did not believe in access to the Register for screening, reacted as follows:

> If access is increased, agencies won't register. (Director)

Those who agreed with access to the Register for screening commented in the following ways:

> Crazy that you could employ molester that could become involved with clients. (Director)

> Given that there is one, [it's] pretty stupid that you can't check foster/adoptive parents, even employees. The hardest kind of assessment to do is a well-family assessment. . . . We deal with it [access] to some extent; we provide our files to them. Release of information from our files; there is some logic to some access. (Director)

> [Re access] I've never been challenged, never been asked [by the Register why I am calling]. In theory, information is available now. In some circumstances it could be subject to some abuse; civil rights individuals whould be rather unhappy. (Supervisor)

> One of the uses surely is for prevention. If a person has been registered, that means he has abused a child. If we are selecting people to care for children surely that should be one of our assessment tools. A darn good one, too. (Director)

Some of the respondents were concerned about safeguards to protect the civil rights of the individuals being screened:

> [Open] access is a radical departure from present access and I would see this as necessary in the extreme. However, I would in that event tighten the procedures of verification and the standards to be applied since it would clearly affect employment and increase the "public" nature of the Register. If we classified the extent of the abuse and allowed access according to the classification, then might allow greater useful access while still protecting the alleged abuser. This is perhaps beyond my expertise in its classification connotations, but it may warrant consideration. (CAS Lawyer)

> It [Register] definitely should be continued but its use should be radically altered to provide more useful access with procedural safeguards increased. (CAS Lawyer)

> I think that broader access might be beneficial, but there would have to be a safeguard, such as allowing an agency to contact the Register with the permission of the individual. (Supervisor)

> Strangers should be on Register. Organizations such as Big Brothers should have indirect access to information, i.e., through police--[individuals being screened] should sign freedom of information form. (Front Line Worker)

We received a significant number of requests from organizations outside the CAS to have access to the Register so that their employees and volunteers can be screened for previous acts of child abuse. Among the position papers and letters received and interviews conducted, just under one-half of the respondents (18 of 38 or 47%) wanted access to the Register for screening employees or volunteers. Over one-third of the respondents had no opinion or were uncertain. A few recognized that the rights of individuals were to be considered and suggested written consent by the applicant whose name was being checked. Seven of nine school board representatives wanted access. Other than school boards, organi-

zations supporting access for screening included: Ministry of Education, Big Brothers of Canada (personal view of Executive Director), Big Brothers (London, Ontario), Metro (Toronto) Community Services Department, Ausable Springs Family Services, The Youth Services Bureau of Ottawa-Carleton, the Ontario Association of Professional Social Workers (OAPSW), the Ontario Secondary School Teachers' Federation (OSSTF), the Office of the Official Guardian (Ministry of the Attorney General), and Director of Crown Attorneys (Ministry of the Attorney General).

The Deputy Minister of Education offered these comments on the issue:

> The use of the Child Abuse Register as a screening mechanism or employment check will be of significant value to Ministry staff and school board officials. Needless to say, the ultimate beneficiaries of such screening will be the children whose physical safety will be better protected. While the Ministry of Education does recognize and respect the right of privacy of all persons, including those of alleged child abusers whose names are entered in the Register, the position of my Ministry is, nonetheless, that a child's right to safety is paramount to an alleged abuser's right to privacy.

An example of the position taken by a number of child-serving agencies is as follows:

> I would like, on behalf of the Board of Directors of the Youth Services Bureau, to inform you that after considerable discussion on this matter we are of the strong opinion that this information should be made available to service providers. As responsible caregivers, we must have access to all information which will help us to ensure the safety and health of the clients in our care. (Youth Services Bureau of Ottawa-Carleton)

In a position paper from the Ontario Provincial Police, the concern about the inconsistency of registering individuals highlights the difficulties in using the present Register for screening purposes.

> There has been considerable controversy in the media surrounding the Register with respect to false allegations and perceived violation of basic human rights. Although as a police agency we have no direct access to the information contained in the Register, we share in these concerns. Before placing any merit on data contained in the Register, we would need to feel confident in its validity.
>
> Unfortunately, in its present state of apparent unreliability, the Register cannot be utilized either in an investigative capacity, or for rehabilitative development or research purposes.

There is substantial support for use of the Register for screening purposes both by CASs and by other organizations, though it is generally recognized that screening will require ensuring that information on the Register is accurate and that individual rights are adequately protected.

## EFFECTIVENESS OF REGISTER: RESPONDENT VIEWS

CAS and Ministry respondents were asked to comment on the importance of the Register's stated objectives and given an opportunity to assess to what extent they were being met.

Table 22 exhibits the assessment of the importance of the stated objectives of the Child Abuse Register by the CAS Directors and the Supervisors. They were asked to rate, not rank, the degree of importance of each objective. In the interviews it became obvious that many respondents found it difficult to assess the importance of the objectives without referring to the effectiveness of the Register as it currently operates. It is nevertheless useful to consider the questionnaire results.

**TABLE 22: IMPORTANCE OF OBJECTIVES OF THE CHILD ABUSE REGISTER**
(In Percentages)

| OBJECTIVES | VERY IMPORTANT | | SOMEWHAT IMPORTANT | | NOT SO IMPORTANT/ UNIMPORTANT | |
|---|---|---|---|---|---|---|
| | DIR | SUP | DIR | SUP | DIR | SUP |
| To assist in identification of previously registered abusers | 88 | 86 | 6 | 10 | 6 | 5 |
| To assist in identification of previously registered abused children | 67 | 40 | 16 | 38 | 16 | 22 |
| To monitor child abuse case management of CASs | 22 | 12 | 22 | 30 | 56 | 58 |
| To act as a deterrent to further abuse | 28 | 26 | 22 | 24 | 50 | 51 |
| To provide statistics and information to learn more about child abuse in Ontario | 62 | 46 | 28 | 42 | 10 | 13 |
| To contribute to public education about child abuse | 38 | 24 | 42 | 35 | 20 | 41 |
| To contribute to the development of policy and programs | 51 | 35 | 29 | 38 | 20 | 28 |

DIR = CAS Executive Directors or Senior Managers
SUP = CAS Supervisors

A discussion of the perceptions about each of the objectives follows.

## Identification

As Table 22 shows, despite the small percentage of matches between the number of calls to check whether someone is registered and the number of actual records of a registrant from another CAS (2.2% as shown in Table 15 on page 79), identifying abusers is perceived by senior CAS managers and Supervisors as the most important objective of the Register. Far fewer believed that the Register was very important to identify abused children.

On another question, Front Line Workers were asked to rate the importance of various factors in investigating a potential child abuse case. Contacting the Register to learn whether the child was previously registered was ranked the least important of 13, while discovering whether there was prior registration of the abuser was considered somewhat more important. Interviewing the child was considered most important; a physical or medical assessment of the child and an interview with the suspected abuser were also considered very important. The entire results for the question of importance factors in investigation can be seen in Appendix D.

During interviews, some Directors and Supervisors acknowledged that very few clients seem to move outside of the immediate area and that some can be easily found through a neighbouring CAS with whom there is effective communication. One Director commented:

> The push for the Register came out of early literature which showed that parents took care to avoid detection [by moving]; this has not proved true. (Director)

The lack of mobility by registered abusers indicates that there may only be a limited need for a province-wide Register to assist in identification of abuse cases.

## Research and Public Education

Supervisors are less concerned than the Directors that the Register should contribute to education of the public about child abuse; 59 percent of the Supervisors in contrast to 80 percent of the Directors viewed this objective as important. More important to both groups (88% and 90% respectively) is that the Register provide statistics and information to learn more about child abuse.

The CAS Directors reported having received only one eleven-page report of some summary statistics which was done in 1984, and complained about the dearth of regular, more detailed reports.

Very little original research has been done using the Register information, despite the fact that researchers can have access with permission of the Director

of the Register. One doctoral candidate who had difficulty in obtaining the necessary information from the Register contemplated changing her thesis topic. Another researcher who has actually used the Register for a study questioned the accuracy of the information which she managed to obtain about adolescent abusers, since the figures were very low in comparison with those in other jurisdictions.

In the course of conducting our Review, we requested statistical data from the Register. While the staff were co-operative, they frequently took long periods to get the requested information; the data provided were inconsistent on certain occasions. We were informed that the process of computerization of records from previous files rendered the data somewhat unreliable, and were assured that problems would be rectified in the future.

## Development of Policy and Programs

About three-quarters of the Directors and Supervisors (80% and 73%, respectively) felt that the contributions of the Register to policy and program development was at least somewhat important. One CAS commented in a position paper:

> It was hoped that by maintaining good information with respect to each registration and follow-up information with respect to the outcome of the situation that a data base would be established from which research and policy development could be undertaken. This purpose has not been fulfilled to any significant degree primarily because the data base is both incomplete, inaccurate and inconsistent. Only a few attempts have been made to use the Register as a base for research and policy development.

## Case Management

Over half the respondents did not see as important the objective "to monitor child abuse case management in CASs". In the interviews, some Directors had difficulty in understanding how the Register could be used for case management. They could not see how there could be monitoring, other than by means of analysis of statistics for abuse cases.

Some spoke about internal monitoring:

> The Register should not have role in monitoring child abuse case management. They [CAS staff] are already accountable to other bodies. (Director)

> It is a good way for the agency to internally monitor and consider abuse cases. The abuse Register forces the agency to investigate and monitor. But, overall, one has to ask whether this is the best mechanism to do this. (Supervisor)

In one position paper from a CAS, this comment was made:

> Using the Register for monitoring case management to ensure cases have been properly handled has not been achieved...[therefore] the Register is not a necessary or helpful tool in the management of child abuse cases.

## Deterrence

Approximately one-quarter of the Directors and Supervisors believed the deterrence objective was very important, but over half of them thought it was unimportant. This finding is consistent with the fact that during investigations of abuse cases, the same proportion of Supervisors (26%) actually mentioned the Register to individuals to deter further abuse (proportionately fewer [20%] of the Front Line Workers did so).

Approximately one-third of the Supervisors and Front Line Workers believed registration discouraged future abuse in at least one of the cases which they had handled. However, almost one-quarter of them felt that they had no cases in which registration had this effect, while one-half of the Front Line Workers (proportionately fewer Supervisors) said they did not know (see Table 23). It must be remembered that relatively few workers would have a long-term view because of the high turnover rate of staff.

**TABLE 23: REGISTRATION HAS DISCOURAGED FURTHER ABUSE IN AT LEAST ONE CASE REGISTERED**
(In Percentages)

| | RESPONDENTS | |
|---|---|---|
| | Supervisors | Front Line Workers |
| Yes | 39 | 30 |
| No | 23 | 21 |
| Do Not Know | 38 | 49 |

Some commented about deterrence as follows:

> The Register holds a spotlight on the abuser. . . . The naming of them as an abuser really bothers them. A tremendous deterrent effect. (Hearing Officer)

> "Monitor" is a silly word; what does monitor mean? How can it be preventive? Deterrent? Don't see anything coming back. Feed names;

for what? Don't know of any case worker who has ever used Register as a deterrent. Numbers keep growing. (Director)

If threat of court or removal of kids does not deter, a mention of Register is unlikely to have an effect. (Supervisor)

Persons are informed that they are being registered; that in itself is a deterrent. We are talking about babysitters, etc. This is a hope. They will think twice before abusing again. (Supervisor)

Registration makes a clear statement that conduct is unacceptable. Politically theraputic. I would hope that this would be a positive effect from registration. Registration may send an appropriate message. (Supervisor)

No, I don't really believe in the deterrent value or use of the Register. (Front Line Worker)

## General Comments On Effectiveness

In summary, the majority of CAS respondents attributed at least some importance to all but two of the objectives: case management and deterrence.

Some comments made about the Register's effectiveness were revealing:

For all the criticism, it has served to force the system to think through what it is going to do with alleged abusers and their victims. [It has] served to reinforce the idea that this [child abuse] is personal assault and there is a quantity that we never suspected. [It may] focus public attention. (Director)

The unintended effect is that it really becomes perceived that your name being on the Register is a judgement registered against you. To the people we deal with it says, we think you did it; they get a letter, a really important decision has been made, they have been branded for all time. This is reinforced by an expunction hearing where their name is still on. (Director)

Usually registration is seen as a positive thing on the part of the family [of children abused outside the home] because it means the children are believed. (Front Line Worker)

I really see it more as a theraputic sort of thing, for social workers. Do not know if it means anything to people who are registered. For my work it is helpful. (Front Line Worker)

Other than research, I cannot think of anything else they can do to help us. (Director)

> Personally [I] do not see any value for the Register; cannot see any benefit. There are may be potential benefits: information re treatment for sexual abuse; research reports. . . . (Supervisor)

> It does give you the information right up front. Gives you feeling of having some information at fingertips. Being able to contact other agencies is important. I do not see a whole lot of value beyond that. It is one more piece of paper to send in a report. I do not sense the use of it for a lot of purposes. I do not get any feedback on my reports. What happens to it? What is done with it? We do need an information centre for the sake of other CASs working with family. (Front Line Worker)

## Respondent Ideas for Reform

Table 24 presents a summary of the views of Program Supervisors, Directors and Supervisors about whether to continue or disband the Register. They were asked about three options in terms of "strongly agree", "agree", "disagree", "strongly disagree" and "uncertain".

**TABLE 24: OPTIONS FAVOURED FOR THE REGISTER**
(Percentage of Respondents Strongly Agreeing or Agreeing)

| OPTIONS FAVOURED* | MCSS Program Supervisors (n = 26) | CAS Directors (n = 51) | Supervisors (n = 106) |
|---|---|---|---|
| Continue in present form | 28 | 21 | 20 |
| Continue with modifications | 84 | 85 | 84 |
| Disbandment | 8 | 16 | 21 |

* Respondents were able to respond to more than one option.

Approximately one-quarter of all groups would continue the Register in its present form, and fewer would disband it. Over four-fifths wished to continue the Register, but with modifications. The Front Line Workers were not asked this question, but the interviews indicated most wished to continue it in some form.

When asked what kinds of modifications they wanted for the Register, the four mentioned most often by Directors were: better guidelines (clearer and more specific); separate registers for convicted and suspected abusers; a separate register for victims; and more access to information on abusers. Other suggested modifications included: better forms; more feedback to agencies; an automated Register with controlled access through local terminals 24 hours a day; and providing the Register with more staff to allow it to act as a consultant to local CASs on abuse and programming.

## CRIMINAL RECORD CHECKS

The present Ontario Child Abuse Register cannot be used for screening those who work with children. However, some use is currently made of criminal records for screening. It is worth briefly considering the use of such records for screening, as recommendations about the use of a register for screening will be inevitably compared to the use of criminal records.

In 1986, the Ministry of Community and Social Services implemented a policy concerning a "Criminal Reference Check" as part of the process of screening staff and volunteers working with children and dependent adults. Such checks are mandatory for programs operated directly by the Ministry, and a "preferred practice" for Ministry-funded and licensed programs.

The checks are done using the Canadian Police Information Computer System (CPIC). The individual upon whom the check is being done must be informed of the process, and sign a consent form authorizing the check. Steps are taken to ensure that information received from CPIC is kept confidential. In the case of applicants for Ministry positions, there is no screening done until after the person has been conditionally accepted for a job. The existence of a criminal record does not necessarily preclude a person from being hired. When deciding whether to give a position to a person with a criminal record, consideration is given to the nature of the record, the length of time since the offence occurred, the rehabilitative efforts undertaken by the individual and the nature of the position.

The records provided by CPIC for job screening provide information about criminal convictions and outstanding charges. The information relates to violations of both federal and provincial law. However, there is no information provided in regard to offences committed prior to the age of 18 (*Young Offender Act* convictions), offences for which a pardon has been given, or charges for which an individual has been acquitted. About five percent of those screened by the Ministry in 1986 had some form of criminal record, which includes convictions of provincial offences. About one percent had records which were a "cause for concern" and possible rejection.

For Ministry positions, the check is done through the Ministry's Investigations Unit, which has access to CPIC. Other agencies obtain access to CPIC through local police forces such as the Ontario Provincial Police. The Commissioner of the Ontario Provincial Police commented in his letter on the information CPIC provides for child serving agencies and gave suggestions about access:

> This information is not explicit and does not necessarily indicate the nature of an assault or the age of a victim and therefore does not 'flag' the record as belonging to a known child abuser. As an added safeguard, we suggest that all potential employees and volunteers, not only of the Children's Aid Society, but all child serving agencies, be processed through one central COMSOC depot for review against the Register.

In making this recommendation, he indicated some concerns about the reliability of the information presently on the Register, and indicated that without increased reliability screening should not be undertaken.

**TABLE 25: CAS ACCESS TO COURT/POLICE RECORDS AND TYPE OF ARRANGEMENT**

| | CASs | |
|---|---|---|
| | n | % |
| ACCESS: | | |
| Full | 20 | 45 |
| Partial | 23 | 52 |
| None | 1 | 2 |
| ARRANGEMENT | | |
| Informal | 32 | 78 |
| Formal (written) | 9 | 22 |

All but one of the 44 CASs who gave information regarding access to police records reported that they had at least partial access, but for most it is usually on an informal basis (Table 25).

Thus, while CASs generally have access to criminal records information, in the course of our interviews we discovered that in a number of localities, other child-serving agencies experience considerable difficulty in securing the cooperation of the local police force in conducting CPIC screening checks. Police were concerned about the volume of requests and the extent to which agencies could ensure the confidentiality of the information they received, and therefore sometimes refuse requests.

As a matter of federal legislation and policy, criminal records are not ordinarily provided to employers in non-government agencies, and use of such records for screening even for government positions is limited. There may be considerable difficulty in securing access to CPIC for screening purposes for such employers as school boards and private agencies hiring caretakers for children.

## ALERT SYSTEM

The "child protection alert system" is managed by the staff of the Register Office, but is not connected to the Register itself. The maintenance of the Register and coordination of alerts are two separate functions. The alert system provides notification to the CASs about any "high risk" family or child who has disappeared from the jurisdiction of CAS. The family need not be one in which there had been a registration of abuse. Register staff reported that on average 100 alerts are handled per year. An assessment of the alert system was not a part of this Review; nevertheless, unsolicited comments both in questionnaires and interviews were

made by a few about its usefulness. One-third of the Directors reported that their CAS uses the alert system, but CASs process alerts in different ways.

## ASSESSMENT AND RECOMMENDATIONS

Chapter IV provides an assessment of the present Ontario Child Abuse Register, based largely on the information provided in Chapter III. It is concluded that there are serious limitations to the Register and it should not be continued in its present form. Chapter V makes recommendations for a substantially restructured register system in Ontario.

## SUMMARY

The Review Team visited ten CASs and surveyed the other 41 CASs through mailed questionnaires. Ministry personnel, lawyers, coroners, school board representatives and researchers were interviewed. Views of interested citizens and registered abusers were solicited through advertisments and articles. Letters were sent to a sample of individuals placed on the Register in 1986. Sixty-two registrants contacted the Team to share their views and experiences.

The main issues and principal findings were as follows:

- While the *C.F.S.A.* specifies that a CAS registering a person must "verify" that abuse has occurred, CASs register individuals on the basis of "reasonable belief" or "credible evidence" of abuse.

- The total number of child abuse registrations more than tripled since 1980, and there has been a marked increase in the proportion of sexual abuse cases registered since 1982. In 1986 over 2,000 cases were reported.

- One-half of the Front Line Workers had limited (under four years) experience in the child protection field.

- Even though almost two-thirds of the Front Line Workers participated in at least one child abuse training program in the last three years, none of these programs contained a significant element concerning the registration process.

- When a CAS verifies that abuse has taken place, registration does not always occur; in 1986 in 21 CASs (60% of those who reported statistics on this subject) over 10 verified cases were not registered.

- The final decision about registration is made by different types of individuals in different agencies, and in many CASs it is a shared decision. Though registration forms must be signed by the Executive Director or a designate, in practice the assessments of Front Line Workers about registration are crucial. When decision-making is difficult, most CAS

Directors (94%) consult Ministry documents; a majority (71%) consult their child abuse team; almost half (44%) consult the CAS lawyer; and a few (18%) consult Register staff.

- The two most important factors which determine whether registration will occur are "statement of the child" and "evidence of a pattern of abuse". In decisions not to register, CAS staff are influenced mostly by the lack of a pattern (condition) of abuse. Next, Workers and Supervisors are influenced most by the family's potential to provide a safe environment for the child. It was confirmed that CASs are not much influenced by criminal proceedings when deciding whether or not to register.

- The degree of discretion in deciding whether to register an alleged abuser and the need for more specific criteria for registration were repeatedly commented upon in interviews and were dramatically illustrated in the disagreement about whether six specific sample cases given in the questionnaire should be registered.

- There were criticisms about Forms 1 and 2 by many Directors (one-half found them only "fair" or "poor"). Front Line Workers and Supervisors during interviews especially criticized the lack of specificity in the descriptions of "severity of abuse", "court activity" and "permit or fail to pervent" on Form 1; Form 2 was considered to be too long, difficult to complete and not worth the trouble since no summary information was returned from the Register.

- There were delays both in the forwarding of Form 1 to the Register (60 percent of the Directors reported it typically takes more than the stipulated 14 days to forward Form 1) and in the notification of registration being sent to persons placed on the Register.

- The time lapse between a CAS call to inquire about a previous registration and the Register's call back with a response was perceived as a problem by Front Line Workers.

- Approximately one-third of the CAS Directors and Supervisors believed the Register's hours of operation were inappropriate. The remainder approved of them.

- The "match rate" (or rate at which a prior record of registration was found as a result of a call) was six percent over a five month period. However, in only one percent of the calls during a six-week period was it clear that there was a "match", in which the caller was not already aware of the previous registration.

- The low "match" rate is consistent with the low rate for registration of repeat abusers (4%).

- Approximately two-thirds of the CAS staff and about one-half of the MCSS Program Supervisors approved of the 25-year timeframe of registration.

though almost all of the lawyers representing registered persons expressed the belief that there should be a review process or the time period should be shorter.

- Most of the MCSS Program Supervisors (65%) and the CAS Directors (74%) favoured some form of restriction on the registration of minors as abusers.

- In the 1980-86 period, the proportion of requests for expunction compared to registered abusers was very small (5%), and relatively few requests resulted in hearings being held (14%). One-quarter of the hearings resulted in expunction orders.

- All three of the Hearing Officers, who have no legal training, reported that if they had problems with "legal issues" they obtained advice from lawyers in the Ministry's Legal Services Branch. Increasingly, lawyers at expunction hearings are citing the *Charter of Rights*, which has resulted in more frequent consultations with Legal Services.

- Approximately one-half of the CAS Directors and about two-thirds of the lawyers representing registered persons preferred to have a legally trained Hearing Officer. The Organization of Counsel Acting for CASs in Ontario also supported having legally trained Hearing Officers or a Family Court judge deal with expunctions.

- The summaries of 40 expunction hearings held in 1984-87 revealed:

  - The child had been present in only three hearings and testified in only one. No use has been made of audio or videotapes of children's testimony, though in an interview one Hearing Officer suggested they would be helpful.

  - The CAS was represented by counsel in 80 percent of the hearings, and the applicant had counsel in 83 percent of them.

  - The alleged abuser was present in 85 percent of the hearings and testified in one-half of them.

  - In most of the cases (90%), the CAS Worker gave the bulk of the testimony for the CAS and read the case notes in chronological order to describe "credible evidence" of abuse.

  - Police had investigated 85 percent of the cases and in most charges were not laid. In only four of the hearings had the alleged abuser actually been convicted. In three of the four cases where the abuser was acquitted expunction was denied. The standard of proof and evidentiary rules applied in an expunction hearing are much less strict than those applied in criminal proceedings.

- Many registered persons who were interviewed showed a lack of understanding of the distinction between an expunction hearing and a criminal

trial. Only one lawyer who had represented a registered person approved of the present standard of proof required in an expunction hearing; five wanted the criminal standard; and 12 the civil standard--balance of probabilities.

- Less than half of the CAS Directors judged the procedures for expunction requests (44%) and for expunction hearings (39%) quite favourably. While CAS staff generally felt the expunction proceedings were not unfair, almost three-quarters of the registrants' lawyers expressed concerns about aspects of the process. However, two-thirds of these lawyers acknowledged the hearing allowed them a fair opportunity to put forth their client's position.

- The recent decision of the Ontario Divisional Court in *J.B. v. Catholic CAS of Metropolitan Toronto* indicates that Hearing Officers must exercise care when weighing hearsay evidence and should be more cautious about relying on the opinion of a single CAS worker that abuse has occurred. The decision also points to the desirability of having expunction hearings conducted by individuals with more experience with the conduct of hearings, the rules of due process and the laws of evidence.

- One-third of the 62 persons registered as abusers who contacted the Review Team for an interview declared registration itself had no impact on their lives, but a majority of interviewed registrants reported a strong impact on their lives. Half of the registered persons who were interviewed believed the Register deters abuse of children.

- Approximately one-third of CAS Workers reported that they had handled at least one case where the registration of an abuser had discouraged future abuse; about one-quarter thought registration had no deterrent effect; the rest expressed no opinion on the deterrent effect of registration.

- In the six month period Register staff were asked to record the types of calls made, 92 percent of the telephone calls to the Register were made by CAS staff. The remaining calls were made by students or researchers, registered persons, lawyers and others (e.g., media, government officials, citizens). Doctors and other health care workers, who may have access to the Register [*C.F.S.A.* ss. 71(8) and (12)], rarely if ever request access. Social science researchers, who may also be granted access to confidential Register data, rarely seek access nor are they encouraged to conduct research with Register data. Only three since 1979 were identified.

- Current Register policy clearly precludes any use of the Register for screening by CASs or others, though there has been a history of use of the Register for this purpose, particularly in the period before 1986.

- Almost half (47%) of the CAS Directors who responded to the question claimed that in the last two years some screening occurred of their own volunteers, employees and foster parents, and the same proportion re-

ported requests for screening from outside agencies or organizations. Nine percent of the Front Line Workers reported having used the Register in that period for screening CAS volunteers and foster parents, and 20 percent of the Workers who received requests from outside organizations actually complied by calling the Register to get the information for them.

- While CASs generally have access to criminal records information, other child-serving agencies in some localities the Review Team visited experienced considerable difficulty in securing the cooperation of local police in conducting such screening checks using criminal records.

- A large majority of MCSS Program Supervisors and CAS Directors and Supervisors favoured access to the Register for screening CAS employees, volunteers, foster and adoptive parents and individuals responsible for children in outside child-serving agencies and organizations, such as school boards.

- Approximately one-half of the position papers and letters received from organizations outside of the CASs expressed a desire for access to the Register to screen employees and volunteers for previous acts of child abuse. It was recognized by many that screening would require ensuring that Register information is accurate and that individual rights are adequately protected.

- A large majority of CAS Directors and Supervisors considered the Register's objective of assisting in the identification of registered abusers very important. However, the lack of mobility of families and the well-established communication networks of many CASs suggest that there may only be a limited need for a Register to assist in identification of abuse cases. Fewer Directors and Supervisors believed that the Register's objective of assisting in the identification of previously registered abused children was very important. Important to both groups is that the Register provide statistics and information to learn more about child abuse, and many complained about the dearth of regular, detailed reports from the Register. The majority of the Directors and Supervisors attributed at least some importance to all but two objectives: case management and deterrence.

- Approximately four-fifths of those asked (MCSS Program Supervisors, CAS Directors and Supervisors) want to continue the Register but with modifications. Few would disband the Register; those with the highest proportion favouring disbandment were Supervisors (21%). The Front Line Workers were only asked the question in the ten CASs visited, and most wished to continue it in some form.

- The four kinds of modifications most often mentioned by Directors were: better guidelines, separate registers for convicted and suspected abusers, a separate register for victims, and more access to information on abusers.

## FOOTNOTES

1. At the time of the commencement of the Review in January, 1987, there were 51 CASs. On April 1, 1987, two new Children's Aid Societies, Payukotayno and Tikanagan, began to serve native families in northern Ontario. The social workers in these two newly designated societies were not sent questionnaires.

2. Unreported decision, digested in 8 ACWS (2d) p. 296; (Ont. Div. Ct.); more fully discussed in Chapter I.

3. Digested at [1986] WDFL 2438 (Ontario Provincial Court - Family Division); this interpretation was commented upon favourably in *Morisseau v Director of the Child Abuse Register* (1986), 9 C.R.D. 425.10-04 (Ont. H.C.)

4. O. Reg. 551/85.

5. Such a recantation does not necessarily mean the original allegations were false. Clinicians have documented cases of false retractions by children in the face of parental pressure, as part of the "Child Sexual Abuse Accomodation Syndrome". However, the fact of retraction at the very least makes the case more complex than it originally appeared, and suggests that the allegations should have been very carefully investigated by a team of professionals who would then testify at the expunction hearing.

6. (1987), 59 O.R.(2d) 417, 7 R.F.L. (3d) 441, at 444-445, (Ont. Div. Ct.). In this case, the Court also suggested registration may not have been appropriate because the boy friend was not "a person having the charge of the child".

7. As yet unreported, digested at (1986), 9 C.R.D. 425.10-04 (Ont. H.C.)

8. Napier, (1985), p. 29.

## CHAPTER IV: ASSESSMENT OF THE PRESENT CHILD ABUSE REGISTER AND THE DISBANDMENT OPTION

This chapter assesses the present Ontario Child Abuse Register and considers the possibility of disbandment. **It is concluded that the present Register is flawed, has limited utility and poses a significant threat to civil liberties. The Register should be discontinued in its present form**. In the interests of providing a complete assessment of alternatives, the chapter includes suggestions for relatively minor modifications to the Register which would improve its operation, but not involve a major restructuring.

The chapter concludes by considering the disbandment of the Register, which might be combined with increased use of Criminal Records checks for screening and the eventual establishment of a province-wide index of child protection cases. While a strong case can be made for abolition of any form of register, we believe that a properly designed and administered register can serve some very important functions. **Chapter V provides recommendations for a significantly restructured register, which we believe to be the preferred option for Ontario.**

## ASSESSMENT OF THE PRESENT REGISTER

### The Nature of the Register

The present Ontario Child Abuse Register is based upon registration of "verified" abuse cases, but it is conceptually important to appreciate that cases are registered on the basis of "credible evidence" of abuse, rather than on the "balance of probabilities", even though some cases are in fact confirmed in the courts. Since there is registration of cases which are not proven on the balance of probabilities, cases are registered where abuse is only suspected and may not have occurred. Under the present system it is possible that an individual can have an expunction request denied, even though the Hearing Officer may not be fully satisfied that abuse occurred. There only needs to be "credible evidence" of abuse.

Access to the Register is gained under both the name of the child and the suspected or confirmed abuser. At least in theory, individuals are only listed on the present Register as abusers if they have had "the charge of a child."

### Variability of Registration

**One of the major findings of this Review has been that substantial variability exists in the process of and criteria for registration.** There are extreme variations in reporting rates for CASs with quite similar populations and, we would speculate, relatively comparable actual rates of abuse. The variability in the application of registering criteria was dramatically revealed in the Front Line Worker and Supervisors' responses to the six sample cases (Table 10 in Chapter

III), and in the many comments made about vagueness and varying interpretations of the present criteria.

Some of the variation may be attributable to a lack of clarity in the *Guidelines (1981)*; concepts like a "pattern of abusive behaviour" and "serious" may not be easy to apply. Certainly, the lack of regular training in the registration process must play a role. No part of the Ministry-sponsored child protection training programs (Phases I and II) deals with the Register. Similarly, the current plans of the College of the Ontario Association of CASs call for a three week intensive program to prepare new social workers for child protection work, but have no provision for training in regard to the Register. In a field where one-quarter of the workers have less than two years experience, and one-half have less than four years experience, **regular field training of all workers is essential if there is to be consistency in registering practices.**

In theory, having one person in each agency responsible for the registration decision (the Executive Director or delegate) should lend consistency to the process. It is clear, however, that in practice, views of the Front Line Worker are extremely important in any decision about registration. Thus, crucial factual assessments and decisions about registration are made by workers who often have limited experience and frequently no formal training in regard to the process. The views of one often inexperienced social worker may determine whether or not an individual is labelled an abuser.

One might expect that an expunction process with Hearing Officers with a province-wide jurisdiction would lend consistency to the process of registration. However, for any single agency, hearings occur relatively rarely and information about proceedings is not regularly transmitted to staff within agencies. In any event, the vague and contradictory standard of "credible evidence of verified abuse" does not encourage consistency. The expunction process does not seem to have had much of an effect in terms of standardizing registration criteria. It is disturbing to learn that almost one-fifth of the requests for expunction result in an agency decision to remove a name from the Register, without a hearing being held; this suggests a possible lack of rigour in initial decision-making.

**In the child protection field a certain degree of variability in the assessment of a given situation by different professionals is inevitable. However, it is our view that the present variability in regard to the Ontario Register is unacceptably high**. This compromises the utility of information received from the Register, and has very significant negative implications for those labelled as abusers. The existence of an expunction process does not adequately redress the position of persons identified as abusers. It is a costly procedure and more importantly one which may not result in removal of the name of one improperly identified, as there only needs to be "credible evidence" to support the original decision.

## Identification

One of the prime reasons for establishing registers was the belief that they would assist in identification of abuse cases. At least in part this was based on speculation that abusive parents tended to move frequently and seek out different sources for health care in order to avoid detection.

**The findings of this study do not support the view that the Ontario Register is an important tool for the identification of child abuse**. One of the least important factors for Front Line Workers in assessing a potential abuse case is contacting the Register to discover whether there was previous registration of an abuse of the child; discovering prior registration of the suspected abuser was not considered very important by almost one-third of the workers. **From our interviews and correspondence we were unable to document a single case in Ontario in which the availability of information from the Register played a crucial role in the identification of child abuse**. The lack of utility of the Register for identification is generally consistent with the reported experience in the United States, as discussed in Chapter II, and with the experience in Ontario in the 1970s.

The lack of utility of the Register for identification may reflect the fact that "hospital" or "doctor-shopping" is not as common as was originally thought. Further, CASs in Ontario have relatively large geographical catchment areas and suspicious visits to different health care providers will usually be reported to a single CAS. The relatively low rate for externally reported prior abuse probably reflects the fact that abusers are no more mobile than others in our society, and tend to move from one location to another within the jurisdication of a single CAS. In any event, the informal contacts between CASs in Ontario result in many agencies being informed when a known high-risk family moves into their area. Indeed, some agencies have formal protocols to deal with the movement of such families, particularly to adjacent jurisdictions.

**While improvements in the reliability of information in the Register and accessibility to it can increase its utility for identification of abuse cases, it will never be as useful a tool as some of the early proponents of the Register suggested.**

## Research and Planning

A child abuse register can have very significant value as a research tool, both for "academic" research into the nature, causes and treatment of abuse, and for government and agencies monitoring child abuse and programs in a particular jurisdiction.

Unfortunately, **the research potential of the Ontario Register is almost totally unrealized**. Academic researchers have not been encouraged to use the Register; those who have used the Register complain of lack of accessibility and unreliability of data. The Ministry has apparently failed to make any significant use of data from

the Register for planning and policy development. Unlike registers in many American states, there is no regular information supplied to agencies which report to and use the Ontario Register. It is little wonder there is a degree of skepticism among some in the child protection field in Ontario towards the Register.

We continue to believe that **a register can have an important role in research and planning**, and will in Chapter V make recommendations about this subject. For the moment, we would note that **there is no need for information which identifies individuals to be kept in a central register for it to be useful for research and planning.**

## Case Management

A register may have value as a tool for managing child abuse cases. On an internal agency level, the existence of the registration process may have the effect of emphasizing the significance of this particular type of case and focussing supervisory attention. While some in the child protection field in Ontario feel that this is an important function of the present Register, this is clearly a minority view.

The Register could also be used to provide local CAS management and boards as well as Ministry officials with aggregate information about child abuse cases in individual agencies. This overlaps with a research and planning function, and as discussed above, must currently be viewed as an area where there is unrealized potential utility.

**We appreciate the potential use of the Register as a case management tool**, and will return to the subject in Chapter V. For now, we note that **for many case management purposes, there is no real need for identifying information about individual cases**.

## Deterrent Effect

The question of the deterrent effect of registration as a "verified abuser" on an individual's future conduct is a controversial one. One-third of the CAS Directors consider this an unimportant function, but a small number consider it the most important function of the present Register.

**We were unable to empirically determine whether registration in fact has any deterrent effect**, and as far as we know no studies of this have been done anywhere. Inevitably registration occurs as part of a process of investigation and possibly civil or criminal proceedings. Therefore, even if one could ascertain that behaviour was modified after registration, it would be impossible to separate out the effect of registration from that of investigation and criminal or civil proceedings. Roughly one-third of the child protection professionals surveyed expressed the view that registration had a deterrent effect, but over one-fifth thought it did not. The remainder admitted that they did not know whether it had a deterrent effect. Inter-

views with registrants indicated there are some cases where registration has a deterrent effect, but others where it does not.

**It seems to us that while the fact of registration may in some cases have a deterrent effect, in others it probably does not.** With the present level of knowledge, it is difficult to conclude more on the deterrent effect. It is, however, very important to appreciate that **with the present criteria for registration there are almost certainly individuals on the current Register who have not in fact abused any children. In other words, the effect of the present system may be to deter some individuals from committing abusive acts, but at the same time others are being wrongly identified as abusers. Another important point to recognize is that while registration may deter some from further abuse, in other situations it may have a negative effect on the relationship between a worker and a family, even if abuse in fact occurred.**

## Screening

**The Register is not currently authorized for use as a screening device.** As revealed in Chapter III of this report, however, **considerable use was made of the Register for this purpose, and there seems to be some continuing use.** (see pp. 102-3).

One can appreciate the moral dilemma faced by those with access to the Register and concerned about placing individuals with a history of abuse in positions of responsibility for children. The history of use of the Ontario Register for screening illustrates the need for a screening mechanism. However, in view of the current unreliability of information on the Register, we consider such use unfair and inappropriate, and possibly illegal. **We believe that adequate safeguards can be put in place to allow use of a differently designed register for screening.**

## Symbolic Value

Although not well articulated by many of those who contacted us, we can appreciate that **the Register may have important symbolic value to child protection workers and victims of child abuse, and perhaps society at large.** If an abuser escapes criminal conviction on a "technicality" or because the high criminal standard of proof cannot be met, comfort may still be taken from the fact that the individual has been "identified", even if only on a confidential register.

## Civil Liberties

Based on the Canadian and American jurisprudence it may be that the present limited-purpose Ontario Register can withstand attack under the *Charter of Rights*, provided it is not used for screening. We, nevertheless, have **serious civil liberties concerns about the current Register.** We heard from many registered persons

and lawyers that they believed that individuals were wrongly identified as "abusers". The fact that a significant number of registrations are withdrawn by the CAS if expunction is sought and our interviews with professionals in the field support the view that some individuals may well be incorrectly labelled as abusers. For individuals wrongly identified this understandably has profound, negative psychological effects, and in some cases other consequences as well. **With the present low standard of proof for expunction hearings, there are not adequate safeguards for those who are wrongly labelled as abusers**.

We are also deeply concerned about the potential for the misuse of the present Register. CAS workers now have easy access to data which may be unreliable. There is a history of misuse, in particular for screening purposes. It is difficult to police the misuse of information. The Register staff understandably are not in a position to examine the intended use which authorized callers will make of information they receive.

## Conclusions on the Present Register

**The Ontario Child Abuse Register has a number of stated functions: to assist in identification of child abuse cases, to facilitate research and case management, and to deter further abuse. It apparently has limited utility for identification; its deterrent effect is questionable. It is not significantly used at present for research or case management. There is substantial variability in the application of the criteria and processes for registration, and there are important civil liberties concerns arising out of the present Register. We do not recommend its continued operation in the present form.**

**We appreciate that it can be difficult to weigh competing interests, in particular, the protection of children against the rights of suspected abusers. However, in reaching our conclusion we did not have difficulty in weighing competing interests, since the present Register has limited utility for protecting children, imposes significant human resource costs on Children's Aid Societies, and substantially compromises the rights of suspected abusers**. In the next chapter we will discuss and recommend a substantially different model of register, one which is more useful and less compromising of civil rights.

## Modifications to the Present Register

We do not think that relatively minor modifications will result in substantial improvements to the Register. However, given our terms of reference, we believe it appropriate to offer suggestions which would enhance or clarify the operation of the present register, without requiring major restructuring. Some of the recommendations set out here require legislative action, but a number can be implemented by changing policies or regulations. In the discussion of the recommendations, steps which the Ministry has already taken in the direction of implementation are indicated, where we are aware of them.

**We wish to emphasize that our preferred option is not the minor modifications set out here, but the major restructuring discussed in the next chapter.**

- **It should be reiterated that the Register is not to be used for screening purposes; use of the Register for any screening purposes by the Ministry, CASs or external agencies should be an offence.** It is our view that any use of the present Register which might result in an individual's loss of employment, adoption prospects or other opportunities to work with children would violate s.7 of the *Charter of Rights*. On the basis of American and Canadian jurisprudence, discussed in Chapter II, to deprive a person of employment opportunities merely on the basis of "credible evidence" of abuse would appear to constitute a deprivation of "liberty and security of the person" **not** "in accordance with the principles of fundamental justice."

- In our view, the value of a register is very significantly increased if it is used for research. **The Ministry must make a commitment to analyze the information on the Register and disseminate it regularly to agencies and others in the child protection field.** The recently completed computerization of the Register should greatly facilitate this effort. This idea is expanded upon in the next chapter.

- **The concept of "credible evidence of verified abuse" should be modified.** It seems logically inconsistent to have a fact "verified", i.e., found to be true, merely on the basis of "credible evidence", i.e., strong suspicion. Further, it is misleading and needlessly aggravating to alleged abusers to use the term "verified" abuse. A more appropriate term, and one which appears to more accurately capture present practice is simply "credible evidence of abuse".

- The issue of the need to establish a relationship between a child to an alleged abuser must be clarified. It would seem to us that under the present model, **an alleged abuser should be registered regardless of a relationship to a child.** However, it would not seem necessary or desirable to identify a child on the Register unless the child was in "the charge of the person" who caused the abuse. In other words, in a situation of extra-familial abuse (involving a child not in "the charge of" an alleged abuser), it seems unlikely that the name of the child victim will be of much assistance in identifying later incidents of abuse. In extra-familial abuse situations, placing the child's name on the Register may cause the child and family significant embarassment and discomfort without serving any useful purpose. **In extra-familial cases the abused child should not be identified in the Register.**

- **Child victims of abuse who are identified on the Register should have their names deleted when they reach 18.** There is no useful purpose in keeping their names on the Register, and there is some potential for misuse.

- **"Abusers" under the age of twelve should not be listed on the Register, but there should continue to be registration of alleged abusers aged 12 to 17.** A number of professionals we interviewed commented on the potential for some adolescents to become abusive adults. For children under 12 registration

seems inappropriate and has civil liberties implications, since it may be doubtful whether expunction can meaningfully be sought.

- While it seems appropriate to leave names of alleged abusers on the Register indefinitely, **there should be a process for removal of the names of individuals who have abused children, but can demonstrate that they are rehabilitated and no longer pose a significant threat to children**. Such a process is discussed further in Chapter V, dealing with a new model for a register; it could include application to the CAS after an alleged abuser has been on the Register five years, with a right of appeal if the agency is not satisfied that a name should be removed. (Of course, one may ask what constitutes "rehabilitation" for someone not proven to have abused a child, but this is an unresolvable dilemma and reflects the inherent weakness of a Register of suspected abusers.)

- **There must be regular training for all those responsible for investigating child abuse cases in the registration process and criteria for registration**.

- **Consideration should be given to modification of the definition of "abuse"; in particular, the parts of the definition found in the *C.F.S.A.* s.37(2)(e), (f) and (h), which deal with failure to consent to the provision of medical care, and emotional or mental conditions**. These do not fit well with the definitions found in s.37(2)(a) and (c). A more appropriate definition for "abuse" is discussed more fully in Chapter V.

- **The Guidelines for Reporting to the Register should be rewritten, at very least to reflect the legislative amendments in the *C.F.S.A.*** which provide a new definition for abuse. **Similarly, the *Guidelines for Expunction Hearings* should be rewritten to reflect the new legislation**, though in practical terms these changes do not significantly affect how hearings are to be conducted. It has been suggested by CAS users that some parts of these documents are somewhat ambiguous or vague. While inevitably there will be some imprecision in defining terms and procedures in the child protection field, some redrafting would be useful, doubtless in consultation with CAS staff. We understand that the Ministry is presently in the process of revising these materials and revised versions are being held back pending the results of this Review.

- **Form 1 should be altered**. The list of categories for "relationship to the child" should be expanded, assuming that the concept of "having charge of the child" is altered, so that individuals like teachers and babysitters may be classified. Names and birthdates of siblings under 18 should always be provided. The "overall degree of abuse" question should be eliminated, since it is very vague and information can be more usefully captured through "indicators", which may be expanded to provide more information. The category of "permit or fail to prevent abuse" should be retained, but its relationship to the categories of "Alleged Abuser" and "Parents of Child" should be clarified.

- **There are good arguments to support the abolition of Form 2, the "Follow-up Report"**. In many cases it is not completed, and workers complain it is difficult to fill in. In particular, the section on "Causative Factors" is difficult for CAS workers to meaningfully complete, especially since the worker handling the case

when Form 2 is completed is often not the one who initially investigated the case. On the other hand, the "Services Provided" question may have considerable utility and can be relatively easily answered by a worker not initially involved in a case; inclusion of some type of assessment of the effectiveness of different types of services may have value. Consideration should be given to having CASs send in a single report within 30 days of an initial investigation, which might reasonably include some of the information presently contained on Form 2, as well as all of the information on Form 1. If Forms 2 are retained, there is very limited utility to a four month's report; annual reports until closing of the case would suffice. While Forms 2 can provide valuable information for research purposes, they should only be retained if there is a real commitment by the Ministry to analyze and disseminate information based on them. Information about outcomes of criminal proceedings is not specifically sought on Forms 2; if this form is retained, this information should be recorded on it.

- **The hours of operation of the present Register seem adequate**, though if one believes that the Register plays a vital role in the identification of abuse cases (which we do not believe), it could be argued that there should be some form of 24-hour-a-day access.

- There are legitimate complaints about delays in receiving information back from the Register, though it is expected that the present computerization of the records will substantially eliminate this problem. **A worker making an inquiry of the Register should be able to indicate a case may be urgent and receive an immediate response by return telephone call, including all relevant information about the prior history of the case**. At present, workers can indicate an inquiry is urgent, but the response is not always prompt, and is apparently limited to an indication of whether prior registration has occurred and, if so, the name of the registering agency.

- **If the Register continues to be a confidential list and not used for screening, we do not consider it inappropriate to have expunction hearings conducted by a non-judicial tribunal**. It should be made clear that after a request is made to remove a name, the CAS may decide to remove the name voluntarily. The present statute calls for a decision about amendment of the Register to be made by the Director, with the possibility of this task being delegated; we believe that the legislation should specify that decisions are to be made by independent Hearing Officers, who will normally be appointed for specified terms. **It is important that Hearing Officers be independent of the CAS and the Ministry, and that they have the appearance of being independent**.

- None of the present Hearing Officers has legal training. **We think it desirable that Hearing Officers be legally trained, as well as familiar with child protection issues**. A majority of CAS lawyers favoured having Hearing Officers legally trained, as did most of the lawyers representing alleged abusers at expunction hearings; about half the CAS Directors favoured this as well. The fact that the present Hearing Officers sometimes feel the need to consult with Ministry lawyers about various legal issues may lead to an apprehension of bias; having officers with legal training would obviate the need for this.

- **There should be a time limit for making an application for expunction, preferably six months after an individual receives notification of registration**. In some cases individuals have sought expunction years after registration; in these situations, memories have faded and witnesses disappeared. If a limitation period is adopted, this should be clearly indicated on the notification sent to registered persons. There should be a process for ensuring that an individual actually receives the requisite notification.

- If non-judicial Hearing Officers continue to deal with expunction, the *Statutory Powers Procedures Act* will apply, subject to any "rules" the tribunal may be empowered to make pursuant to s.3(1)(b) of that Act. **We think it desirable to have legislation or rules making clear that children may testify at expunction hearings in the absence of an alleged abuser, and that videotapes or audiotapes of children's statements are admissible**. There should also be provisions ensuring some form of pre-hearing disclosure by the CAS of the nature of its case. Though usually not a problem, the lack of disclosure appears to have caused difficulty in some cases. It should be possible for a Hearing Officer to receive evidence not normally admissible in a court, e.g., hearsay evidence, as is the current practice.

- While expunction proceedings should normally be conducted in private, as now required by ss.72(11) and (12) of the *C.F.S.A.*, **it should be possible for a Hearing Officer to allow observers to attend, provided the parties consent**.

- Children who are listed on the Register as having been abused should not normally be formally notified in writing of an expunction hearing since, unlike a child protection proceeding, they will not be directly affected by its outcome. **It should, however, be clear that they may be added as parties, attend and be represented by counsel. CASs should be required to inform children old enough to appreciate its significance that a hearing will be held and that they may choose to participate. If a child has a lawyer from prior child protection proceedings, it should be mandatory that that lawyer be informed of the expunction hearing**.

- **The present right of appeal to the Divisional Court should be retained**. We note that the two appeals made since 1979 have both been successful.

- **The term "expunction" is somewhat obscure, and a more comprehensible term like, "Register Correction Hearing", should be used to describe the procedure**.

## DISBANDMENT WITHOUT CREATION OF A NEW REGISTER

While the case for abolition of the Register has been made by a men's group and civil liberties advocates, probably the most forceful arguments for disbandment have been made by those in the child protection field. About one-fifth of the senior CAS staff we contacted favoured disbandment of the Register, and we received a few thoughtful position papers from CASs taking this position.

The proponents of abolition of the Register cite its lack of present utility for identification of child abuse cases and the unreliability of its information. Some individuals have also expressed a concern that too much weight may be placed on the fact that there was, or was not, a prior registration; inexperienced workers may rely too much on unreliable data from the Register. The intrusive nature of the Register for individuals improperly identified as abusers is also cited. Further, even if an individual is properly registered, some professionals feel that notification from the Register may undermine the efforts of a CAS worker to establish a therapeutic relationship with a family and may be detrimental to the self-image of a registered person.

A number of individuals in the child protection field also stress that CAS workers devote substantial time and energy to the registration process, including initial reporting, notification and expunction, with very little to show for their efforts. It is argued that having the Register serves little purpose, as good casework practice always involves investigation of the history of a situation of suspected abuse. If a family being investigated has recently moved into the area, contact with child protection authorities in the place of previous residence should be a standard practice, particularly since even now contacting the Register only reveals prior abuse, and not other prior involvement with a CAS. It is also suggested that there is no need to use a register for screening purposes, as a Criminal Records check will reveal a history of convictions for prior abuse.

## Assessment of the Disbandment Option

**Disbandment of the Register has certain advantages. It is clearly the least expensive and intrusive option, and meets any civil liberties concerns. We do not, however, recommend this option. Disbandment of the Register would result in the loss of a potentially valuable tool for research and case management. It might also be perceived as a very negative symbolic act. Further, we believe that a properly designed register can be a much more useful tool for screening and preventing future abuse than can a Criminal Records check, and will have some utility for the purposes of identification of abuse.**

While we do not recommend complete disbandment, if this option is selected, certain steps can be taken to minimize the effects of loss of the Register.

Many of the research and planning functions of the Register can be maintained by requiring each CAS to provide detailed statistical reports to the Ministry about its child abuse cases. These reports should be made on a quarterly basis, and provide a profile of the nature of the cases but with no identifying information about any individual case. The Ministry should only expect agencies to provide this information if it is analyzed and the results disseminated.

While the present Ontario Child Abuse Register cannot be used for the screening of those who will work in positions of trust with children, we propose a new form of register which will allow this function to be performed. If a register al-

lowing for screening is not established, all of those who have employees or volunteers working with children should have access to the Criminal Records of these individuals, with the individuals' consent being obtained. As we discussed in Chapter III, the Ministry of Community and Social Services now has a Criminal Records check policy and access to such records. However, some agencies and employers working with children are having difficulty obtaining such access, even with the consent of the individuals involved. A Criminal Records check may be better than no screening for a history of child abuse, but it is not the preferred option, as Criminal Records are both under and over-inclusive. Criminal Records are under-inclusive in that until now only a small percentage of abuse situations resulted in criminal convictions. Further, convictions of young offenders do not appear. Thus, many of those with a history of abuse would not be screened by a Criminal Records check. On the other hand, a Criminal Records check would reveal a history for all types of offenses, and might result in inappropriate discrimination against individuals who may have committed relatively minor offences in the past.

If there is no register for child abuse cases, consideration may be given to the establishment of a province-wide index for all CAS cases. As discussed in Chapter II, in 1984 British Columbia abandoned its child abuse register in the face of civil liberties concerns and now has a centralized electronic index of all family service and child protection cases in the province. A similar "on-line", province-wide, computerized index is also feasible in Ontario. A centralized index would, of course, facilitate identification of a prior history of CAS involvement, including a history of abuse, and would facilitate a CAS investigating a case to contact agencies with prior involvement. We will return to the question of a province-wide index in Chapter V; it is possible that one may be established in addition to a register. At this point, however, we would note that the establishment of such an index has significant implications for local CAS autonomy, as well as financial costs. Further, civil liberties issues which arise in regard to a child abuse register, namely who is to have access and for what purpose, must also be faced for a province-wide index of all CAS cases.

## CHAPTER V: RECOMMENDATIONS FOR A NEW ONTARIO CHILD CHILD ABUSE REGISTER SYSTEM

### INTRODUCTION

In Chapter IV we provided an assessment of the current Ontario Child Abuse Register and found it seriously deficient. In this chapter we present our recommendations for a substantially restructured Register system, one based on "sub-registers" designed to achieve different purposes. Many of the proposals in this chapter will require legislative action to amend the *Child and Family Services Act*.

**We recommend the creation of a "Register of Child Abusers"**. Individuals would only be placed on this register if they were found by a court or competent tribunal to have abused a child or if they have admitted having done so. With the consent of individuals involved, use could be made of this Register for screening applicants for positions of responsibility for children.

**We recommend that a second register, the "Child Abuse Research Register", be established**. This centralized Register would contain information about each case without identifying the abuser or the abused child and could serve a most important role in research and planning. It could also play a useful role in management of child abuse cases by CASs.

As well as a thorough discussion of each of the recommended registers, the Register of Child Abusers and the Child Abuse Research Register, the chapter includes a discussion of extra-provincial issues, and issues related to their implementation, in particular in regard to training, the use of existing Register data, interagency information exchange and the protection of privacy legislation.

### THE SUB-REGISTER MODEL

The "sub-register" model involves having a centrally administered Child Abuse Register with different "sub-registers" or "directories" for different purposes. Each sub-register would have a different type of information and separate rules about such matters as notification, access, use of data, and removal or correction of information. This model allows for a more sophisticated approach than the present Register.

Legislation based on the sub-register concept was recently introduced in Manitoba. As discussed in Chapter II, that province has recently adopted a "two directory" registry, with a "Child-Victim Registry" and "Child Abuser Registry". The sub-register model was also recommended for adoption in Ontario in the 1985 Napier Report, discussed in Chapter I. Indeed, although not formally recognized as such, in some ways the present Ontario Child Abuse Register operates on the basis of a sub-register model. Children who are identified as victims are treated differently from the abusers; parents or guardians of abused children do not

normally receive notification about registration and they have no statutory right to seek expunction.

**We recommend the establishment of two sub-registers: A "Register of Child Abusers" and a "Child Abuse Research Register".**

**The "Register of Child Abusers" will list those who have admitted to abusing a child, or who have been found by a court, on the civil or criminal standard of proof, to have abused a child.** There would thus be a process of confirmation before a person's name appeared on this Register. **With the consent of individuals, use could be made of this Register for the purpose of screening them before employment in positions of responsibility for children.** Child protection agencies would also have access for investigative purposes. There should also be a process for eventual removal of names from this Register if there is no reasonable concern about individuals committing future abuse.

**The "Child Abuse Research Register" will contain detailed but non-identifying information on each suspected or confirmed child abuse case in the province.** Local CASs reporting to the Research Register will retain the identifying information about each case, and thus be able to use the registration process as a case management tool. The central Research Register, with only non-identifying information, will avoid civil liberties implications or a potential for misuse, but has the potential to be a vitally important tool for research, planning and monitoring of abuse in the province.

In this chapter we also give consideration to establishment of sub-registers of "Children at Risk of Abuse" and of "Suspected Abusers". These sub-registers might have a limited utility for identification of child abuse, but, on balance, the social, administrative and financial costs far outweigh any advantages; therefore, they are not recommended.

## REGISTER OF CHILD ABUSERS

### Purpose

**While the "Register of Child Abusers" will have considerable utility for research, case management and the identification of child abuse cases, its primary purpose will be for screening individuals who seek to occupy a position of responsibility with children.** A relatively small number of individuals who work with children are abusive, but unfortunately those who have a history of abuse in those positions have the potential to abuse many children. Data for 1986 from the present Ontario Register indicates that about 4 percent of abuse is committed by persons placed in positions of responsibility for a number of children, including school teachers, babysitters, day-care staff, and foster and adoptive parents. However, given the problems in placing extra-familial abusers on the present Register, this figure is undoubtedly low. Information from the USA suggests 5 to 15 percent of abuse is committed by such persons.

Although treatment may be effective for some abusers, one of the best ways to protect children is to ensure that those with a history of abuse are not placed in a position to further exploit children. We are not suggesting that those with a history of abuse can never have responsibility for the care of children. However, their history should be known so that risks can be assessed.

Unlike the present Ontario Child Abuse Register, this proposed register ensures due process for an individual identified as an abuser.

## Definition of "Abuse"

**If a Register of Child Abusers is established, the definition of abuse should be altered.** At present, s.68(1) of the *C.F.S.A.* defines "abuse" by reference to s.37(2)(a), (c), (e), (f) and (h), some of the clauses which identify a "child in need of protection":

> s.37(2)(a) The child has suffered physical harm, inflicted by the person having charge of the child or caused by that person's failure to care and provide for or supervise and protect the child adequately;

For the purposes of s.37(2)(a) there must be some "measurable injury", and acceptable corporal punishment is not abuse. This provision includes intentional abuse as well as neglect or a failure to adequately care for a child.

For the purposes of child protection proceedings, the courts have a reasonably clear concept of "physical harm". However, as discussed in Chapter III (pp. 54-5), "person having charge of a child" has been defined by at least one judge as restricted to mean a person with custody of the child, such as a parent. This narrow definition excludes individuals such as babysitters and day-care workers who mistreat a child.

**It is our recommendation that any individuals who physically harm children, regardless of their relationship to the child involved, should be listed on the Register.** An adult neighbour who assaults a child (even if provoked by an incident such as vandalism) poses a risk to children, and should be listed for screening purposes. **There are, however, certain situations where there should not be registration if one child assaults another.** While violence between children or adolescents may occasionally require action by the courts or appropriate authorities, it should not be regarded as "child abuse" unless the attacker is in a position of responsibility or trust for the victim (e.g., a babysitter), or there is a substantial age disparity between the attacker and the victim (e.g., at least five years). As discussed below, there should be special provisions to facilitate the removal of names of youths from the Register of Child Abusers.

It must be appreciated that in some localities there will be a significant increase in CAS responsibilities if agencies are expected to be involved in reporting cases of extra-familial abuse situations. In many localities the CAS already inves-

tigates these cases, (in conjunction with the police), reports appropriate cases to the Register, and provides services to children and families. In some other locations, the CAS will usually not be involved in extra-familial abuse situations such as where a teacher is suspected of sexually molesting a child. Thus, for many CASs the proposal to include all types of extra-familial abuse in their reporting responsibilities will have little or no impact, but for others there may be a significant increase in responsibilities, with concomitant resource implications. **In our view, it makes sense for CASs across the province to have some involvement in all child abuse cases, both for investigation and reporting, and to ensure that adequate services are being provided. In localities with a broad range of non-CAS services, however, the CAS role in extra-familial abuse may be limited to monitoring and reporting.**

**"Failure to protect" should continue to be a basis for registration.** This provision is typically used if a parent fails to prevent abuse by a partner; such a failure causes concern about the parent's commitment to promoting the welfare of children.

> s.37(2)(c) The child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child.

The concepts of "sexually molested" and "exploited" might seem a little vague, but like the criminal law concepts of "sexual touching" and "sexual assault" can be dealt with adequately by the courts. "Sexual molestation" and "exploitation" should be retained. We believe that any person who has sexually molested or exploited a child should be listed as an abuser, regardless of relationship to the child; that is, the concept of "having charge of a child" should be totally eliminated from this part of the definition.

Consensual sexual activities and experimentation between children of approximately the same age would not normally be considered "exploitation" or "molestation".

"Failure to protect" a child from sexual abuse by a person having custody or care of the child should remain a ground for listing on the Register. A person who fails to protect a child from sexual abuse by another poses a serious potential risk to children.

> s.37(2)(e) The child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, the treatment.

This provision is currently used if parents refuse to provide treatment which a doctor is recommending. It is commonly used where for religious reasons parents refuse a medically recommended blood transfusion for their child. While this pro-

vision should continue to be a basis for finding a child in need of protection and reporting to the CAS, **we do not consider it appropriate to identify as an "abuser" a parent who refuses to provide medical care for religious or moral reasons**. This should be eliminated from the definition of "abuse", or a "good faith objection" exception should be introduced.

> s.37(2)(f) The child has suffered emotional harm, demonstrated by severe
>
> (i) anxiety,
>
> (ii) depression,
>
> (iii) withdrawal, or
>
> (iv) self-destructive or aggressive behaviour, and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to services or treatment to remedy or alleviate the harm.
>
> s.37(2)(h) The child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to treatment to remedy or alleviate the condition.

**While the definitions in s.37(2)(f) and (h) may be adequate for reporting and finding a child in need of protection, they are not appropriate for defining "abuse", at least for the purpose of registration.** They contain no notion of causation; a parent who is absent and therefore cannot provide a consent to treatment may be considered an "abuser".

We recognize that emotional and mental abuse of children are serious clinical problems which, in appropriate cases, require CAS intervention. However, we have some doubts about the utility of legally establishing that a particular parent or caretaker so clearly has responsibility for the child's condition that they should be listed on the Register of Child Abusers. If a definition is developed for the purposes of registration of abusers, it should require a degree of responsibility for causing the condition, and it should be restricted to a serious condition which can be clinically diagnosed. On balance, we do not believe such a definition should be developed.

## Procedures for Placing Names on the Register of Child Abusers

**Names should be placed on the Register in all situations where there is confirmed abuse committed by an adult or a young person. Children under 12 should not be identified as abusers**, both because of concerns over their welfare and rehabilitation and because of difficulties with ensuring that they have due process before their names are placed on the Register.

The Register should list both intra- and extra-familial abusers, although there may be intra-familial situations where registration is not necessary as there is no prospect of a situation arising where future screening will be appropriate. **CASs should have the discretion not to report intra-familial abuse cases where the incidents are isolated and less serious**.

**Confirmation of abuse, and recording of names of abusers should occur if there is:**

**(1) a conviction for a criminal offence involving child abuse; or,**

**(2) a written admission by the abuser; or,**

**(3) a finding by a judge of the Provincial Court (Family Division) that, on the balance of probabilities (civil standard) the individual has abused a child; or,**

**(4) a finding by any court or tribunal of competent jurisdication that, at least on a civil standard of proof, the individual has abused a child.**

Each of these means for having a name placed on the Register will be discussed in detail. It should be emphasized that each involves some form of due process and an impartial procedure to determine whether abuse has occurred. Such a determination will normally be conclusive and hence there will be no need for an expunction or correction process. There should, however, be a procedure for a name to be eventually removed in cases where there is no reasonable prospect that abusive conduct will reoccur.

(1) Criminal Conviction

**In any situation where an individual is convicted of a criminal offence involving child abuse, this should be reported to the Register of Child Abusers**. This would include convictions of adults as well as young persons dealt with under the *Young Offenders Act*. Criminal Code offences would include:

- sexual interference with a person under 14 (s.140);[1]
- invitation to sexual touching of a person under 14 (s.141);
- sexual exploitation of a minor (s.146);
- bestiality in the presence of a child (s.155);
- procuring a minor for sexual activities (s.166-67);
- sexual exposure involving a person under 14 (s.169[2]);
- prostitution offences involving juveniles (s.195[2]-[4]);

- any form of assault or homicide against a child; (subject to earlier comments where the abuser is under 18);
- offenses involving neglect of a minor (s.197-200 of the Code); and
- the provincial offence of child abuse under s.75(2) of the *Child and Family Services Act.*

If there is a conviction in Ontario for any of these offences, there should be an obligation by the police or court to inform the local CAS, which will in turn inform the Register.

(2) Admissions

**A written statement signed by an individual admitting child abuse should be a basis for registration of that individual as a confirmed abuser**. An admission would only be valid for this purpose if the person signing the statement was advised of the right to have legal advice and given an opportunity to consult a lawyer. In keeping with the spirit of the federal *Young Offenders Act*, young persons should be afforded an opportunity to consult an independent lawyer paid through the Ontario Legal Aid Plan prior to signing such a statement. To ensure that these procedures are followed, such statements should always be witnessed by a police officer or a CAS worker.

The statements should be brief, indicating:

(1) an admission to a type of abuse at a date and place specified, and

(2) the limited use to be made of the statement.

The statements should not be detailed confessions.

**Legislation should specify that a statement given for the purposes of registration may be used only for that purpose, and is not directly admissible in any court proceedings. In particular, such admissions should not be used in criminal proceedings**. It is doubtful that provincial legislation could constitutionally restrict the use of such statements in a criminal prosecution, which is governed by federal law. However, if an attempt were made to use such a statement in a criminal prosecution, it seems likely that it would be ruled inadmissible as a statement improperly induced by a false promise, or perhaps as a statement taken in violation of constitutional rights.[2] One would hope that if provincial policy on this issue were clear, such a legal issue would never arise, as no Crown Attorney should ever try to make use of such a statement in court.

Having admissions as the basis for registration recognizes that there will be situations in which a criminal prosecution is not considered appropriate and an individual is prepared to acknowledge abusive acts. As noted in Chapter II, new legislation in Manitoba makes an admission of abuse a basis for registration (p. 34).

In most situations, one would expect the admission would be accompanied by some undertaking to receive counselling or therapy. Registration would help ensure that the individual would not in the future be placed in a position to exploit children. The process of obtaining an admission could be regarded as analogous to a consent order in a child protection application or a guilty plea in a criminal case. Such outcomes are often the result of pre-court discussions involving lawyers, and it is to be expected that individuals making an admission for the purpose of registration will have full access to legal advice.

In regard to an admission for the purposes of registration, it is conceivable that an individual may later assert that the admission was untrue or coerced. Where registration is based on an admission, there should be a possibility for the individual to make an application to a Provincial Court (Family Division) to have the registration nullified. In this case the CAS would bear the onus of proving abuse on the civil standard, but the admission would raise a presumption that abuse had occurred, unless the person who made the admission established that the statement was improperly coerced or untrue. In all other situations of registration, there must be some form of independent fact finding before registration occurs and there should not be any opportunity for relitigation of the issue. In any situation where a court has made a finding of abuse, it should be conclusive for the purposes of registration, unless the finding is overturned on appeal.

(3) Family Court Finding of Abuse

**There should be a possibility for a civil proceeding which will identify individuals as abusers and may affect future prospects of employment. This proceeding should have a less rigorous standard than that applied in criminal cases, but it should clearly be more rigorous than the present expunction hearings.**

**We recommend that in addition to admissions and criminal convictions, CASs should have the option of making an application to the Provincial Court (Family Division) for a finding that a person has abused a child.** (In Hamilton-Wentworth the proceeding would be in the Unified Family Court.) Such findings should be on the civil standard of proof, proof on the balance of probabilities, and with the rules of evidence normally applicable to child protection proceedings rather than criminal cases.

At present, in abuse situations, a finding on the civil standard may result in a parent losing custody of a child in a Family Court proceedings, or may be sufficient for dismissal of an employee. This, therefore, would seem to be an appropriate standard for placement on the Register. It accords with the standard of proof in the

American states where registration may result in loss of employment or similar opportunities. It also seems to satisfy the requirements of s.7 of the *Charter of Rights*.

The rationale for having a registration proceeding distinct from the criminal process is that there may be cases in which a criminal prosecution is not appropriate, or in which a conviction cannot be obtained according to the high criminal standard of proof and strict criminal rules of evidence. At present, a relatively small number of child abuse cases result in criminal prosecutions. The high criminal standard of proof and strict evidentiary rules have made the police reluctant to lay charges, knowing that convictions are difficult to obtain. Successful criminal prosecutions may become more frequent when the new federal law dealing with sexual offences against children, Bill C-15, comes into effect, probably in early 1988. Until now, it has been very difficult for child victims to testify. Certain important kinds of evidence will continue to be inadmissible in criminal prosecutions, most significantly a child's out-of-court statements and expert opinions about whether abuse has occurred. These kinds of evidence are regularly admitted in civil cases. We believe that the CAS should have the option of conducting a civil proceeding to determine whether an individual should be listed as an abuser, particularly since decisions about whether to have a criminal prosecution and how to conduct it rest with the police and Crown Attorney rather than the CAS.

There may be a concern about potentially parallel civil and criminal proceedings dealing with essentially the same issue, though this is not an uncommon phenomenon in our complex society. In abuse situations, individuals may now face criminal prosecutions and expunction hearings, or criminal prosecutions and a child protection or custody hearing. Parallel proceedings are also possible in other contexts; for example, a fraudulent stock broker may face criminal prosecution, a civil loss of licence proceeding before the Ontario Securities and Exchange Commission, and civil damage suits by disgruntled clients. We thus consider it appropriate to allow for the possibility of both a criminal prosecution and a civil child abuse registration proceeding. However, as a matter of policy, CASs should be advised to normally not commence a child abuse registration proceeding in Family Court if a criminal prosecution is commenced. Only if the CAS believes that there has not been a full consideration of the issue in the criminal proceeding should it resort to a separate civil child abuse registration proceeding. If there is no criminal prosecution, the CAS should be free to commence a civil child abuse registration proceeding in Family Court.

It should be possible to have a child abuse registration proceeding in Family Court joined with a regular child protection application, allowing both issues to be dealt with simultaneously. This type of proceeding is particularly likely in cases of intra-familial abuse which the CAS considers appropriate for registration, since a protection application is usually commenced in any event. Registration would be appropriate in any intra-familial case of serious abuse or a pattern of abuse, or where there is a reasonable belief that the abuser should be screened in regard to possible future positions of responsibility for children.

It should also be possible to have a separate civil proceeding for child abuse registration in Family Court. This would be appropriate in cases of extra-familial abuse, where child protection applications are not usually commenced. In all extra-familial cases, CASs should normally ensure that a criminal prosecution or civil child abuse registration proceeding is commenced, provided there is sufficient evidence to support a finding of abuse.

While it would be possible to have a civil child abuse registration application dealt with by a non-judicial Hearing Officer, we consider Family Court proceedings preferable. Given the importance of registration on the Register of Child Abusers compared to registration at present, it seems more appropriate for the issue to be dealt with by a court. Family Court judges have very substantial experience in dealing with allegations of abuse. Further, having the matter dealt with in Family Court would allow the question of registration to be dealt with at the same time as a child protection application. Finally, a number of lawyers and CAS workers indicated that lack of familiarity with the procedures of non-judicial tribunals made expunction proceedings more difficult for them than a court hearing. Courts have the advantage of being a more widely understood forum, with known procedures, and a clear and publicized system of precedent which should lend consistency to decision making.

Child abuse registration proceedings should be conducted in a fashion similar to child protection proceedings in Family Court. They should be conducted under the same evidentiary rules, with their limited use of hearsay evidence. There should also be the same very limited public access to the court. Proceedings should be resolved as expeditiously as possible. There should be the same right of appeal as for a child protection case.

It is to be expected that there will be individuals who are not actively opposing the application for registration, but are not positively making an admission. **As with other types of civil cases, there should be a method for expeditious but impartial decision-making in situations where the person whose name is to be registered is not contesting the issue.** A civil child abuse registration proceeding should be commenced by an application supported by affidavits from the social workers and other witnesses likely to be called at a hearing. The application and affidavits should be served on the alleged abuser, with a requirement that a notice of objection be filed within 30 days. If an objection is filed, there must be a hearing. If no objection is filed, the application and supporting affidavits should be sent to a judge, who should have the authority to make the order sought or require a hearing to be held. This type of procedure is similar to that applicable in civil default judgements and divorces.

We strongly recommend that there should be the possibility of having a civil child abuse registration proceeding in Family Court. However, it would be possible to have a Register of Child Abusers without having this kind of proceeding, and simply allowing confirmation to occur in the other ways specified here.

**(4) Other Proceedings**

The issue of whether a particular individual abused a child may arise in a variety of other legal forums, for example, a parental custody dispute, a criminal prosecution conducted outside of Ontario, or a civil damage suit. If the CAS becomes aware of such a court finding, it should be able to report this to the Register of Child Abusers.

**We recommend that there should be registration on the Register of Child Abusers in any situation where a person resident in Ontario has been found by a competent court or tribunal, acting at least on a civil standard of proof, to have abused a child. If there is any dispute as to the meaning or validity of a particular court finding for purposes of Ontario registration, it should be resolved by application to a Family Court judge.**

The use of the "other proceedings" for registration is most likely to be used in regard to out-of-province abuse situations, which are more fully discussed later in this Chapter (p. 157). This provision is modeled on that used in a number of American states, as discussed in Chapter II. It avoids a multiplicity of proceedings.

**The Possibility Of A Registration Designation: "Investigation Pending"**

An argument can be made that the Register of Child Abusers should include a recording of "Investigation Pending", in situations where criminal charges involving child abuse have been laid but not come to trial, or where a civil child abuse registration proceeding has been commenced in Family Court but not resolved. Under this proposal a name would be removed if criminal charges resulted in an acquittal, or charges were dropped or stayed, or if the Family Court did not make a finding of abuse. If a conviction or finding of abuse were overturned on appeal, the registration would also be deleted. Any report from the Register in this situation would clearly indicate that this is only a case where there is an "Investigation Pending" and there has been no confirmation of abuse.

At present, an agency conducting a Criminal Records check will learn of both convictions and unresolved criminal charges before the courts, so an "Investigation Pending" designation would be consonant with Criminal Records checks. As discussed in Chapter II, a number of American states which use registers for screening have some provision for dealing with cases under investigation.

An "Investigation Pending" designation would help in identifying suspected abusers who move from the jurisdiction of one CAS to another, and would effectively prevent a person under investigation from gaining employment in a position of responsibility for children; it might also result in individuals under investigation for abuse being suspended from positions involving reponsibility for children.

**We have, however, concluded that, on balance, it is not desirable or necessary to have reports made in situations where there is an "Investigation Pending". Reports should only be made to the Register of Child Abusers when there has been confirmation of abuse**. This keeps the purpose and significance of the Register clear, and avoids the administrative problems which may arise if criminal charges are commenced of which the CAS is unaware, or an acquittal has occurred, or a stay has been entered. In view of the fact that the Register of Child Abusers is intended to be used for job screening, having an "Investigation Pending" designation has serious civil liberties implications.

We also believe that there will be relatively few situations where a person under investigation for abuse will move to the jurisdiction of another CAS or seek new employment involving responsibilities for children. As at present, an employer may decide to suspend an employee who has responsibility for children and who is under investigation for child abuse, with the potential for liability for loss of income if the employee is subsequently cleared. Even without a process for registration of "Investigation Pending", it seems likely that in most situations where persons employed in positions of responsibility for children are actually under investigation for child abuse, the employer would soon learn of this.

As discussed below (p. 149), we do recommend that once an individual has been registered, the CAS should be authorized to inform an employer or agency which at the time of registration has the registrant in a position of responsibility for children, of the fact of registration.

## Reporting to Register of Child Abusers

Reports from CASs to this Register should be written on a relatively simple form. The name of the abuser, of the abused child and their relationship should be reported, as well as a brief description of the nature of the abuse. There should also be information about the child's parents or caretakers.

All identifying information about the child and parents should be deleted when the child reaches 18, unless the parent is the abuser or has failed to protect the child, in which case identifying information should be kept about the parent until removed in accordance with the procedures set out below. **Identifying information about a child should always be deleted when the child reaches 18 years of age**.

There must be a clear indication on the reporting form of the manner of confirmation; it is probably desirable that the Register be given a copy of the appropriate court order or admission.

Records must contain sufficient identifying information about abusers to allow later screening; we will return to this issue.

## Notification of Registered Abusers

**We recommend that individuals whose names are placed on the Register of Child Abusers should receive written notice of registration**, even though the process recommended involves a clear confirmation of abuse, and individuals are likely to have more awareness of the process than is sometimes the case at present.

The notification should clearly indicate the limited use to which information on the Register can be put, as well as the rights of a person identified as an abuser. These include the right of inspection and to seek removal of a name from the Register. These rights are more fully discussed below.

## Use of Register of Child Abusers: Screening

**A primary purpose of the Register is to allow screening of applicants for positions of responsibility with children, though it will also serve as a tool for investigation of child abuse and research. The process of registration should have a greater deterrent effect than the present Register as it involves a more substantial process which clearly focusses on those who have in fact abused children**.

There should be a process for obtaining access to the Register to screen individuals for volunteer and paid positions where they would have direct and significant responsibility for the care or supervision of children. These positions would include teachers, group home employees, juvenile correctional staff, school bus drivers, recreational workers and coaches of children's sports. The Ministry of Community and Social Services should require screening for CAS employees, licensees and employees of facilities caring for children, foster parents and adoptive parents. It would be illogical to give the Ministry and CASs access to the Register for screening while denying similar access to other agencies with responsibility for children, providing confidentiality is maintained.

Employers and agencies not under the jurisdiction of the Ministry should also be able to use the Register for screening. It is anticipated that many such employers and agencies will seek use of the Register for this purpose; at least some may be motivated by concern over potential civil liability for failing to do so. A person whose name is on the Register should not be automatically precluded from employment or service as a volunteer, though clearly such situations will be closely monitored. Employers and agencies not normally responsible to the Ministry of Community and Social Services, like school boards, should not be obliged by the Ministry to screen.

**The fact that a person's name appears on the Register should be admissible in any proceeding where the custody of a child is being decided, but not in any other proceedings**. It is doubtful whether the Ontario legislature could constitutionally prohibit use of such evidence in a criminal proceeding. However,

the present federal law governing criminal trials would clearly preclude a court from receiving such evidence.

Although it may be tempting to expand the use of the Register, to retain its acceptability it should not become a screening device for all positions of trust in society. It should remain a confidential and limited tool to screen those directly responsible for children. It should not, for example, be used to screen those who wish to serve on the boards of agencies which work with children, or to screen employees such as salespersons who come into contact with children only as part of their work with the public in general. These situations do not involve a significant opportunity to exploit a position of trust or responsibility for children.

## Access to the Register of Child Abusers

As with the present system, there should be some individuals with direct access to the Register of Child Abusers, while others should have access through CASs.

**The following persons should have a right of direct access:**

- **an individual whose name is on the Register or a lawyer or agent acting on behalf of such a person should have access to information about that person;**
- **the Official Guardian [who has responsibility to protect the legal interests of children] or any authorized agent of the Official Guardian;**
- **a coroner investigating a death of a child, or a doctor or police officer assisting a coroner; and,**
- **a researcher who has permission of the Director of the Register.**

All of these individuals have access to the present Register under s.71 of the *C.F.S.A.* and we believe that this opportunity for access should be continued. While they have not frequently exercised the right of access, representatives of the Office of the Official Guardian, coroners and researchers have found the Register useful.

Subsection 71(8)(b) and (12) gives a discretionary opportunity for access to physicians and treatment personnel. These provisions have rarely, if ever, been used and need not be continued. In appropriate cases information from the Register may be shared with such individuals by the CAS.

**Children's Aid Society and Ministry staff should have access to the Register for purposes of investigating and treating child abuse cases. They should be permitted to share information from the Register with those directly involved in investigation of abuse, such as the police or health care personnel. It should also be possible to share this information with those involved in treating or caring for the child, such as foster parents and service providers, and with**

**those who may be treating or counselling the abuser. Unauthorized disclosure of information from the Register should be an offence.**

The use of the Register of Child Abusers must be strictly controlled; it is intended to be a confidential register, not a public list. **Screening through the Register should be done only with the written consent of the individual being screened to ensure that the individual is aware that a Register check is being done and that there is no improper use of the Register**. The report from the Register for the screening check should indicate either that there is no "record of child abuse", or that there is a "history of abuse", with a specification of the category of abuse, the date of confirmation and the reporting agency. A description of the abuse and the name of the victim should not be given out as part of the screening process.

When authorizing the screening, the individual should authorize the Register to directly inform the employer or agency involved. However, if the Register indicates a "history of child abuse", the individual should receive notification that this information is being released. This will give the individual an opportunity to explain the history and resolve any possible cases of mistaken identify or other inaccuracies in the Register.

The details for implementing a screening process which will probably involve screening of thousands of individuals a year should be left to the Ministry, but it would probably be most efficient to have local CASs play an important role in verifying the identity of those involved in the process. If an agency or employer is known to the CAS, for example, a group home, it would seem appropriate for the CAS to receive from the employer a consent form signed by the individual to be screened, identifying the individual and authorizing the screening. The CAS would then send the form to the Register for a clearance check. If the CAS was not familiar with an employer or agency, for example, if a family hiring a nanny wished to have screening, the CAS would require the individuals being screened to attend the CAS to establish their identity, and to ensure that the position involved responsibility for the care of children. Once the CAS established the identity of the individual and the validity of the request, the form could be sent to the Register, which would respond directly to those requesting screening.

The model of access to screening described above, and based on the routing of signed consent forms through local CASs, does impose some additional demands on each CAS, but has the advantage of carefully controlling access to the Register. It is also possible to have a system of access under which employers or agencies would send forms signed by those who are to be screened directly to the Register in Toronto. This system would require a province-wide mechanism for identifying employers and agencies eligible to use the Register for screening.

It may be best to have a "two-track" access system. Large employers or agencies, like school boards or the Ministry itself, would have specific authorization, obtained after clearance, to send the directly-signed consent forms to the Register. The Register would have a list of all such authorized users, and could

send responses directly to them (with copies to the individuals being screened in case of a previous history of abuse). Smaller agencies or employers would seek access to the Register for screening through local CASs, in the manner described above.

The process for screening must be administered in such a way that a clearance can be given promptly, certainly in a matter of days not weeks. We do envisage, however, the possibility that individuals may be offered a position conditional upon a Register clearance check indicating no prior "history of child abuse".

**Register of Child Abusers: Establishing Identity**

The utility of the Register for screening or identifying individuals with a history of child abuse depends upon linking a previously registered individual with one who appears later. In other words, the reliability of the Register as a screening device rests on the capacity of those using it to accurately establish the true identity of individuals. This may not always be easy in a society in which individuals sometimes change names as a matter of convenience or when a new relationship is formed.

The present Criminal Records (C.P.I.C.) checks undertaken by the Ministry of Community and Social Services are done using name and birth date. We are informed that this is a generally accurate way of establishing identity, provided that the name originally entered is accurately and completely spelled; the computer program used to do Criminal Records checks searches for variations of name spelling and different birth dates, increasing the reliability of a check.

In some American states, social security numbers or driver's licence numbers of abusers are recorded to facilitate identification. Consideration might be given to use of such numbers for identification purposes on the Ontario Register of Child Abusers. Absolute certainty for identification of an individual requires fingerprinting. In many American states fingerprints are used to screen child care workers against nation-wide criminal records. Canadian police forces also use fingerprints to accurately link individuals to their criminal records. We do not recommend fingerprinting of all confirmed abusers. This might be useful, but seems too intrusive. We do, however, recommend that CAS workers be given statutory authority to require individuals who are investigated as suspected abusers to fully identify themselves.

Consideration should also be given to requiring that the Register of Child Abusers be informed of those undergoing a legal change of name, just as information about legal name changes is shared with other government departments.

## Register of Child Abusers: Confidentiality

**We recommend that the Register of Child Abusers should be a confidential list. As previously stated, it should be an offence to improperly disclose the highly sensitive information on the list.**

**Use of the Register for screening purposes should be limited to jobs or situations involving direct responsibility for the care or supervision of children.** There may be others who can argue that they have a legitimate interest in this information, for example, nursing home operators concerned that individuals with a history of abusing children may also abuse the elderly. There might be situations where insurance companies may want to know whether an individual has a history of child abuse. Our view is that use of the Register of Child Abusers should be limited to its intended purpose. It should not become a societal or employer "black-list", and use for purposes other than screening for positions involving responsibility for children should be precluded.

It should be an offence for an employer or agency which has learned through a screening check whether an individual is on the Register to disclose this fact. Further, it should be an offence for employers, agencies, insurance companies or anyone else who is not authorized to use the Register to ask individuals seeking a job or other benefit whether or not they are on the Register. If unauthorized requests about registration are not precluded, individuals may be under pressure to "voluntarily" produce evidence that they are not on the Register.

We conceive of the Register as playing essentially a passive role for screening; information will only be given out if requested. **There should, however, be a provision which would permit a CAS which has registered an individual as a confirmed or admitted abuser to inform an employer or agency which has the person in a position of responsibility for children of the fact of registration.**[3] The CAS would not ordinarily be authorized to tell future or past employers that an individual is on the Register, but a present employer or agency having the person in a position of responsibility for children might not be aware of the abuse, and if not informed might not discover it. As a matter of policy, CASs should normally be expected to ensure that appropriate employers or agencies are informed of the abuse. There are similar provisions in many American states, and in the brief we received from the Ministry of Education endorsed having the Register play a limited "proactive role".

## Removal of Names from the Register of Child Abusers

At present names remain on the Ontario Child Abuse Register for 25 years. A name properly placed on the Register, that is, on the basis of "credible evidence of verified abuse", cannot be removed earlier. At one time Hearing Officers sometimes ordered removal if there was clear evidence that abuse would not reoccur; this practice stopped when the Ministry pointed out it was not provided for in the *C.F.S.A.* If an abuser's name is removed, non-identifying information about

the case may be kept for research purposes; the removal of identifying information about the abuser will of course require removal of identifying information about the child.

**We recommend that names of abusers should remain on the Register of Child Abusers indefinitely, but there should be a process for removal of names if it is established that there are no reasonable grounds for believing that an individual poses a future threat to children. A person should be able to apply for removal from the Register five years after being listed as a confirmed abuser, provided there has been no further listing on the Register.** Under the federal *Criminal Records Act*, a person may seek a pardon five years after the completion of a sentence imposed for a conviction of an indictable offence; it seems appropriate to have the same time for seeking removal of a name from the Register of Child Abusers.

The process for removal should involve an initial request by the registrant to the CAS which reported abuse to the Register. If the CAS refuses the request, there should be a right to a hearing before an impartial decision-maker. If civil child abuse registration proceedings are conducted in Family Court, it would be appropriate to also have removal of names dealt with in this forum. Family Courts have experience in periodically reviewing cases from dealing with child protection and young offenders matters, which are often reviewed.

**In an application for removal of a name from the Register, there should ordinarily be an onus on the applicant to establish that there is no likelihood of further incidents of abuse being committed.** This may involve adducing supportive evidence from a counsellor, therapist or minister, and establishing a record of good behaviour since registration. In considering an application, the Family Court should be able to admit and act on "evidence that the court considers credible and trustworthy in the circumstances". In other words, just as in parole hearings, hearsay evidence should be admissible. If the Court finds that there are reasonable grounds to believe that further incidents of abuse have occurred since initial registration or may reoccur in the future, the individual's name should not be removed from the Register. The CAS which rejected the initial application should be a party to the removal hearing. The CAS will often maintain contact with an abuser and be in a position to provide information. While sometimes the CAS will not have kept contact with an abuser since registration, the CAS is probably the best placed agency to do follow-up work. In any event, the onus placed on the abuser seeking removal from the register should assist the CAS in dealing with a case.

In keeping with the spirit of limited accountability articulated in the federal *Young Offenders Act* and with the views of many respondents to this study, we recommend that there should be special provisions to facilitate removal of names of individuals placed on the Register of Child Abusers as a result of acts committed under the age of 18. **We recommend that there should be a presumption that a person whose name was placed on the Register for acts committed under the age of 18 should have his or her name removed after five years, if there is no**

**further registration.** The CAS which placed the name on the Register should be obliged to reconsider the registration after five years, regardless of whether the individual makes an application, though the CAS may decline to have the name removed. If the name is not removed and the individual wishes to appeal the decision to Family Court, the CAS should bear the onus of establishing a lack of effort or success in appropriate treatment or counselling, or reasonable grounds to believe further abusive acts may have occurred.

If an application for name removal is rejected by the Family Court there should be a right of appeal to the District Court for an error of law. An individual denied removal should be able to reapply after a further five years, provided there has been no further listing on the Register.

## Two Legal Issues: The Human Rights Code and the Constitution

There are two related legal issues which arise in connection with the establishment of a Register of Child Abusers. Both arise out of the use of criminal convictions as a basis for listing on the Register. We do not believe that either issue precludes establishment of a Register in the form proposed here, but the issues do merit consideration.

The Ontario *Human Rights Code* provides:

> s.4(1) Every person has a right to equal treatment with respect to employment without discrimination because of . . . record of offences. . . .

The term "record of offences" is defined in s.9(h) to mean:

> (i) an offence in respect of which a pardon has been granted under the Criminal Records Act (Canada) and has not been revoked, or
>
> (ii) an offence in respect of any provincial enactment.

The effect of the *Code* is that an employer cannot ordinarily deny a person employment because of a conviction for the provincial offence of child abuse under s.75(2) of the *C.F.S.A.*, or for a conviction for a *Criminal Code* offence like sexual assault of a minor, if a pardon has been granted.

The proposed Register of Child Abusers does not record convictions per se, but rather records confirmed child abuse, with confirmation established in a number of different ways, including criminal convictions. **It is our view that if an employer denies an individual employment on the basis of registration, this does not contravene the Human Rights Code, even if registration is based on a conviction of a provincial offence [child abuse contrary to s.75(2) of the C.F.S.A.] or a conviction for a federal offence for which a pardon has been granted.** It is the confirmed history of abuse, not the conviction, which causes the denial of

employment. It would be anomalous if the issue of whether the *Human Rights Code* is violated depended upon the basis of registration, a matter about which an employer would have no knowledge. While we do not believe the *Human Rights Code* would be violated by the scheme proposed, **in view of potential uncertainty it may be desirable for legislative provisions creating the Register to specify that they take precedence to the Human Rights Code, or to make an appropriate amendment to the Human Rights Code**.

There is also an issue of the constitutional validity of a provincial Register of Child Abusers which records data based on criminal convictions under federal law. Under the *Constitution Act, 1867*, ss.91 and 92, the federal parliament has jurisdiction over "criminal law and procedure", while the province has responsibility for "property and civil rights", which clearly includes child protection. Two pieces of federal legislation deal with records of criminal convictions, the *Criminal Records Act* and the *Young Offenders Act (Y.O.A.)*.

The *Y.O.A.* s.36(1) specifies that upon termination of a disposition a young person convicted of an offence "shall be deemed not to have been found guilty or convicted of the offence", subject to certain exceptions not relevant here. Subsection 36(3) prohibits employers subject to federal jurisdiction, such as the federal government, the armed forces and federal crown corporations, from even asking job applicants whether they have been convicted of an offence under the *Y.O.A.*. Thus, there are restrictions on the use which can be made of history of offences of persons aged 12 through 17. The *Y.O.A.* ss.45 & 46 also provide for the non-disclosure and destruction of records. The Canadian Police Information Centre (C.P.I.C.) record for a *Y.O.A.* conviction for an indictable offence is to be destroyed five years after completion of any sentence, provided no further indictable offences have been committed. While we support the principle of limited accountability for young offenders and the possibility of ultimate destruction of records, **we believe that for youths placed on the Register of Child Abusers, destruction of records should involve a process of individual application and consideration, and not be automatic**. As discussed above (pp. 150-1), we recommend special provisions to facilitate removal of names of youths placed on the Register.

The *Criminal Records Act* specifies that an adult may seek a pardon two years after the completion of a sentence for a summary conviction offence, and five years after completion of a sentence for an indictable offence. Some of the convictions for child abuse would involve indictable offences, while others might involve summary offences. A pardon is granted by the Governor in Council (federal Cabinet) acting on the recommendation of the National Parole Board. The recommendation of the Parole board is made if the Board is satisfied "after making proper inquiries . . . that an applicant was of good behaviour and that the conviction . . . should no longer reflect adversely on his character". In practice, pardons sometimes seem to be granted after relatively cursory enquiries are made of police forces and references.

The effect of granting a pardon is somewhat obscure. Although the conviction is "vacated", records are not actually destroyed. Technically there remains a re-

cord of pardon rather than the record of a conviction, and police forces do keep records after a pardon. Disabilities associated with a criminal conviction which arise under federal law are removed after a pardon is granted. Provincial legislation, like the Ontario *Human Rights Code*, also specifies that a pardon removes certain disabilities which may arise from a conviction.

It may be argued that any record of child abuse which is based on a conviction of a young offender or in regard to an offence for which a pardon has been granted is unconstitutional. Conceivably, similar arguments could be made about the present Ontario Child Abuse Register.

It is our view that the proposed scheme for the Register of Child Abusers is not unconstitutional and does not infringe upon federal areas of jurisdiction or violate federal law. The Register is not based on recording convictions, but rather on confirmed child abuse. Those using the Register for screening are not informed of whether there was ever a criminal conviction, but rather of whether there was a confirmed history of child abuse. The method of confirmation is incidental to the scheme.

We do not recommend that a record of abuse on the Register of Child Abusers should be automatically deleted if a person is pardoned. In our view this is not legally necessary, nor desirable in practice. Our information is that pardons are sometimes granted after a relatively cursory inquiry. In some situations they may be granted after two years, but young persons are not eligible at all. An individual convicted of an offence involving child abuse may be denied a pardon because of completely unrelated criminal activity. Anomalies would thus arise if the granting of a pardon were the basis for removal of a name.

## Assessment of the Register of Child Abusers

**We recommend the establishment of the Register of Child Abusers. The present Register does not have adequate safeguards to allow for its use as a screening device, and we believe that screening of applicants for positions of responsibility with children is highly desirable. While screening could be done using criminal records, there are concerns about accessibility to some agencies and employers, and about the under- and over-inclusiveness of records of convictions as an indication of a confirmed history of abusing children.**

**The Register of Child Abusers may have an important symbolic function for professionals and the public. It may also have a deterrent effect on some registered persons. The Register will clearly have utility for research and identification of abuse cases. However, if screening is not considered an important objective for a register, the other factors supporting the establishment of this Register may not in themselves justify its creation.**

The fact that at present many abusers are not criminally prosecuted will initially limit the numbers of individuals who are listed, and hence the utility of the Register.

With the expected introduction, early in 1988, of the new federal evidentiary and procedural laws for prosecutions involving sexual offences against children and adolescents (Bill C-15), there will doubtless be significantly more prosecutions and convictions. Further, as CASs become comfortable with the process, we expect there will be a substantial number of civil child abuse registration proceedings in Family Court. The introduction of this type of proceeding has the potential to significantly enhance flexibility in dealing with child abuse cases, while not compromising the civil rights of alleged abusers.

## CHILD ABUSE RESEARCH REGISTER

**We recommend that in addition to a Register of Child Abusers, a Child Abuse Research Register be established**. This Register will contain only non-identifying information, but has the potential to serve as an important tool for research and planning, and to assist in CAS monitoring of child abuse cases. The struggle against child abuse clearly requires more and better information about the nature of the problem and how the system is dealing with it. By having no identifying information, there can be no civil liberties concerns about a Research Register. Though these concerns may remain in regard to local CAS files, they can be dealt with through appropriate protection of privacy legislation.

For each suspected or confirmed child abuse case a relatively simple multi-copy form would be completed by the worker or supervisor responsible for the case, one copy to be kept by the agency, containing identifying information about the abuser and abused child. The copy sent to the Research Register would have an identification number only, and no identifying information about the abuser or the victim. The copy sent the Register should contain information about the age and sex of the child, the family size, and the nature of the abuse. Abuse should be classified by type, with indicators of severity. There should also be a short profile of the purported abuser and the relationship to the child, perhaps information about the source of the report, action taken, the child's situation, and whether this is known to be a "repeat" case. The form should request information about whether some form of confirmation proceedings (i.e. criminal, child protection or civil registration) have been commenced, and the degree of certainty that abuse has in fact occurred. Forms should be sent to the Register within 30 days of an initial report of abuse. Completion of the form should be a standard part of the handling of every child abuse case, even if a report is also made, or expected to be made in the future, to the Register of Child Abusers.

Consideration should be given to having follow-up forms filed on an annual basis, with an emphasis on reports of successful treatment of abusers or victims. This type of information may be very valuable. However, until the value and procedures of the Research Register have been assessed, it may be advisable not to institute follow-up forms.

As discussed in Chapters III and IV, the inclusion in a register of abuse cases which have not been confirmed raises serious issues about the reliability of infor-

mation. This is a very significant problem if individual cases are improperly identified: there are very high social and personal costs to inaccurate labelling. However, for the Research Register, which is not concerned with identifying individual cases, but rather is focussed on broader trends and patterns, there is less concern about the total reliability of information about each individual case. It thus seems appropriate to include information about suspected cases, in order to obtain the most complete picture possible of the dimensions of child abuse in Ontario.

The Research Register proposed here is similar to one presently operating in Minnesota. A copy of the form used for reporting in Minnesota appears as Figure 4. Though it should not serve as an exact model, it is a useful precedent. The Minnesota form has the advantage of capturing a significant amount of information while being easy to complete. A properly designed form can contain a significant amount of information without being too difficult or time-consuming to complete. The exact content of the form for reporting should be developed in conjunction with CAS staff, both to ensure that the categories of information sought are meaningful and to promote a sense of ownership and commitment.

The definition of "abuse" used for the Research Register should include both intra- and extra-familial abuse, but otherwise could be similar to that in the present *C.F.S.A.* While the Ministry might wish to consider having similar forms for all child protection cases, there are reasons for having special forms for abuse cases.

**In addition to having a research and planning function, this Register may have an important case management function. Child abuse cases will be specially recognized; for internal purposes CASs will have identifying information**. The process of completion of the forms can be made part of an internal CAS monitoring process to ensure that child abuse cases are closely supervised. Local CAS file indexes may particularly note these as potential high-risk cases, and intake workers may be advised of the need for expeditious investigation if a case for which child abuse has previously been reported is reopened.

In order to deal effectively with child abuse there is a need for province-wide, regional and local data to show patterns of child abuse and the effectiveness of different types of responses. A Child Abuse Research Register can be established and operated relatively inexpensively. However, **this Research Register will only have value if the Ministry makes a commitment to analyze the information received and to disseminate it to professionals and the public on a regular basis.**

**We recommend that the Ministry act more aggressively to encourage research with Register data to be carried out by independent researchers, and that CASs and others be funded to do such research.**

# FIGURE 4: MINNESOTA FORM FOR REPORTING CHILD MALTREATMENT

Submit to DPW within 20 days of receiving report of incident

## REPORT OF CHILD MALTREATMENT

See Social Service Manual XIV 4350 and XIV 4700

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE
CENTENNIAL OFFICE BUILDING
ST. PAUL, MN 55155

For DPW Use Only

Family (Case) Name on CWD Copy Only

Prepared by _____ (worker's name) Phone # _____ for _____ County, County # _____

Dates: Complaint Received ___/___/___ (mo. day year) Investigation Begun ___/___/___ Form Completed ___/___/___ Report # _____ Agency Case # _____

ENTER *ONE* CODE FOR EACH PERPETRATOR FROM EACH LIST IN APPROPRIATE BOX.

### 3 Alleged Perpetrator(s)

| P* | Age | Sex | Ethnicity | Relationship | Role | Initial Response (Enter all applicable codes) |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| Number perpetrator(s) e.g., if there is one enter #1 above | Age as of last birthdate; if unknown estimate | 1 = Male 2 = Female | 1=white 2=black 3=American Indian 4=Asian American 5=Spanish surnamed American 6=other (specify) 0=unknown | 01=natural parent 02=step-parent 03=adoptive parent 04=sibling 05=other relative 06=parent companion 07=day care provider 08=foster parent 09=institution staff 10=baby sitter 11=teacher 12=other (specify) 00=unknown | 1=committed maltreatment 2=permitted maltreatment 0=unknown | 1=acknowledged allegation 2=denied allegation 3=belligerent 4=non-committal |

NOTE Circle *ALL* applicable numbers below for each item

### Report Summary

**SOURCE OF REPORT**
01=victim
02=family member
03=other relative
04=baby sitter
05=friend/neighbor
06=private physician
07=hospital/clinic
08=public health nurse
09=coroner/medical examiner
10=institution staff
11=law enforcement
12=court/court services
13=other social agency
14=day care provider
15=teacher
16=school nurse
17=other school personnel
18=parent, out of home
19=welfare/social service staff
20=mental health counselor
21=chemical dependency counselor
22=other nurse
23=other (specify) _____
00=anonymous/unknown

**NATURE OF ALLEGATION**
1=physical injury
2=other physical condition or impairment
3=failure to provide necessities
4=mental/emotional injury or impairment
5=sexual abuse
6=incest
7=sexual exploitation
8=juvenile prostitution
9=other (specify) _____
0=unknown

**PREVIOUS REPORT FILED ON SAME VICTIM(S) THIS YEAR**
1=yes
2=no

**INCIDENT LOCATION**
1=child's residence
2=relative home
3=foster home
4=day care facility or home
5=institution
6=other (specify) _____
0=unknown

**STATUS**
ABUSE
1=substantiated
2=unsubstantiated
3=unable to substantiate
4=not yet determined

NEGLECT
1=substantiated
2=unsubstantiated
3=unable to substantiate
4=not yet determined

**PROTECTIVE SERVICE CASE OPENED**
1=yes
2=no

*If more than three, prepare additional form

### 2 Victim(s)

| Child's Name | P** | Age | Sex | Ethnicity | Relationship to Perpetrator P* | | |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | Assign a letter to each child e.g., if there were five children, enter letters A–E under P** | Age as of last birthdate; if unknown estimate | 1 = Male 2 = Female | 1=white 2=black 3=American Indian 4=Asian American 5=Spanish surnamed American 6=other (specify) 0=unknown | 1=natural child 2=adopted child 3=step child 4=foster child 5=grand child 6=sibling 7=institution resident 8=other (specify) 0=unknown | | |

### 5 Comments Section

Continue on extra sheet if needed

### 4 Maltreatment Details

NOTE COMPLETE GRAY SECTION *ONLY* IF ABUSE AND/OR NEGLECT IS SUBSTANTIATED
ENTER *ALL* APPLICABLE CODES

| P** | Maltreatment Code | Severity Code | Action Code |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| Enter each child's letter above | 01=simple physical abuse<br>02=aggravated physical abuse<br>03=confinement by tying<br>04=confinement by locking in<br>05=sexual abuse<br>06=incest<br>07=sexual exploitation<br>08=juvenile prostitution<br>09=other<br>10=emotional abuse<br>11=threatened physical abuse<br>12=other exploitation/abuse<br>13=abandonment<br>14=expulsion from home<br>15=disregard for safety<br>16=inadequate supervision<br>FAILURE TO PROVIDE:<br>17=medical needs<br>18=physical needs<br>19=care for emotional/behavioral problems<br>20=needed nurturance/affection<br>21=other (specify) _____ | 1=fatal<br>2=life threatening or serious injury<br>3=moderate or non-serious injury<br>4=possible injury<br>5=exposed to threatening or dangerous conditions<br>6=apparent health impairment (physical, mental or emotional)<br>7=other (specify) _____ | 1=family counseling<br>2=homemaker service<br>3=day care<br>4=foster care<br>5=shelter care<br>6=health service<br>7=juvenile/family court petition filed<br>8=criminal court petition filed<br>9=other (specify) _____<br>0=none (explain in comments section) |

**If more than five, prepare additional form

## EXTRA-PROVINCIAL ISSUES

There are a number of issues that arise in connection with the reporting of child abuse cases which occur outside of Ontario where the abuser or child moves to or resides in Ontario.

**If the Child Abuse Research Register is established, it should only record cases of abuse occurring in the province, regardless of where the child or abuser may reside or move to.** It would be easiest and most meaningful for this Register to reflect abuse actually occurring in Ontario.

The Register of Child Abusers presents more difficult issues, particularly if it is to be used for screening purposes within Ontario. Legally, Ontario CASs only have jurisdiction over children within the province, and so for legal and administrative purposes deal only with allegations of abuse in Ontario, even though some abusive relationships occur over a period of time and in more than one jurisdiction. Agencies or employers wishing to use the Register for screening will be concerned about a history of child abuse, regardless of where it occurred.

The Ontario courts and CASs will have great difficulty in dealing with allegations of abuse occurring outside of Ontario, though in appropriate child protection cases they may do so if a child is present in Ontario. **We recommend that the Register of Child Abusers deal primarily with abuse occurring in Ontario, but that there be provision for registering an individual as an abuser regardless of where the abuse occurred, provided that the abuse has been confirmed by a competent tribunal, acting on at least a civil standard of proof.** There may, for example, be cases where a person residing in Quebec is convicted in criminal proceedings in that province of child abuse; if the individual moves to Ontario and the child protection authorities learn of the conviction, it should be possible for the CAS to register the person in Ontario, with appropriate notification to the individual. Civil child abuse registration proceedings should be limited to cases where abuse is alleged to have occurred in Ontario, just as Ontario criminal courts have jurisdiction only over offences alleged to have occurred in the province.

There should be provision for extra-provincial exchange of information about histories of child abuse. Clause 71(8)(a)(iii) of the *C.F.S.A.* allows for recognized child protection agencies outside of Ontario to have access to the present Register.

**We recommend that qualified agencies and individuals outside Ontario have access to the Register of Child Abusers on essentially the same basis as Ontario users.**

From a theoretical perspective one can appreciate the utility of a nation-wide or even international register of child abusers. However, there are enormous practical, philosophical and legal problems associated with such a register. In the United States where there are many jurisdictions, some of which are relatively small, there have been proposals for the establishment of a nation-wide register,

but no concrete steps have been taken. Both Canada and the USA have nation-wide computerized criminal records.

The prospects for a nation-wide child abuse register in Canada seem quite remote at present. There is now in Canada a lack of uniformity of definitions and concepts, making difficult even research on an inter- provincial basis.

**We recommend that provincial officials enter into discussions with officials in other provinces with a view to establishing at least common concepts and definitions, and perhaps eventually similar procedures for dealing with registration**. Ultimitely, a nation-wide abuse register may be a possibility.

We have no information about difficulties with individuals with an out-of-province history of abuse moving into Ontario and seeking employment. If this begins to be perceived as a problem, consideration may be given to entering into negotiations with the Canada Police Information Centre to have nation-wide data on criminal offences involving child abuse entered into the Ontario Register of Child Abusers. In the meantime, employers hiring individuals with a history of residence outside of the province to work in positions of responsibility with children in Ontario may consider conducting a Criminal Records check, in addition to a search of the Register of Child Abusers. Where possible, consideration may also be given to consulting child abuse registers in jurisdictions where the individual resided.

## IMPLEMENTATION OF ADOPTION OF THE PROPOSED REGISTERS

If the recommendations for the establishment of a Register of Child Abusers and a Child Abuse Research Register are accepted, a number of issues are related to their administration.

### Training and Monitoring

**If there is to be any form of register in Ontario there must be training for all child protection workers who make reports or receive information. Training must be provided at the time of initial implementation. With the high rate of staff turnover in most CASs, it is also essential that training programs be regularly repeated; ideally all new staff should be trained in the use of the Register before beginning to work for a CAS.**

**The implementation of these recommendations will require the publication by the Ministry of clear and detailed guidelines for CAS workers and Register staff.**

**The Ministry should regularly monitor the reporting practices of CASs and the uses being made of the Register**. If problems are discovered, they should be remedied through consultation and further training, as well as possible modifications in the operation of the Register.

## Use of Material from the Existing Register

The information recorded on the present Register may be useful for research purposes. **Identifying information--names and addresses of listed individuals--should ultimately be deleted and destroyed, but non-identifying data on each case may be retained and analyzed by the Child Abuse Research Register**. If it is not feasible to delete identifying information, all material should ultimately be destroyed. While most of the reports on the present Register probably are genuine cases of abuse, and some have been confirmed by the courts, some of the reports are merely based on "credible evidence" and, on balance, the retention of the material does not seem justified.

It should, however, be possible for CASs to have names placed on the new Register of Child Abusers on the basis of events which occurred prior to the Register's creation. In particular, where abuse has resulted in a criminal conviction prior to the establishment of the new Register, it should be possible for a CAS to have a name recorded on the confirmed abuser list. If this is done, notification should be sent to individuals identified of the fact of registration and their rights. To the extent that information from the present Register may assist a CAS to identify cases where convictions have occurred, it should be shared with the agency to facilitate the re-registration process. One would normally expect that a CAS would only want to have names placed on the Register of Child Abusers if there were a conviction in the five years prior to its establishment. We would note that Manitoba apparently completed a process of conversion of its register in under three months; this involved deletion of all abuser names for which there was no criminal conviction.

## Internal CAS Records of Abuse Cases

Our mandate has been to focus on a province-wide Register, not on the records of individual CASs. As noted in Chapter III, some agencies have internal forms and a special system for identifying cases of abuse. Other CASs rely on the Register process entirely for the purposes of identifying abuse cases, including those previously reported within the agency.

At least initially, the number of cases reported to the new Register of Child Abusers will probably be smaller than the number reported to the present Register. The cases where abuse is only suspected, but cannot be confirmed, will no longer be reported to a central register in an identified fashion, though they will be reported to the Child Abuse Research Register. **It will be important for each CAS to continue to be able to monitor, identify and give priority to its own child abuse cases, whether abuse is suspected or confirmed. The internal copies of the forms used for reports to the Child Abuse Research Register may have significant use in this regard.**

## Interagency Information Exchange and Protection of Privacy Legislation

The present Register and the legislation now in force clearly allow one child protection agency to disclose information from its confidential records to another child protection agency which is carrying out an investigation or providing service. In practice, the quality of the interchange of information between CASs now varies greatly: in some situations it is excellent, in others almost non-existent. Whether or not there is any register, the effective exchange of information must continue. **In particular, even if there is no register identifying suspected cases of child abuse, it will be essential that means be developed to expeditiously share information between CASs which will not compromise confidentiality or the rights of individuals.**

The Ontario legislature has enacted legislation controlling the uses made of government held information. Part VIII of the *C.F.S.A.* deals with "Confidentiality of Access to Records", and was intended to deal with most CAS records, though by virtue of s.163(2)(b) it does not apply to the Register, as the Register has its own statutory provisions concerning access to and accessing of information. While most of the *C.F.S.A.* was proclaimed in force November 1, 1985, Part VIII is not yet in force. In June, 1987, the Ontario legislature passed *Bill 34, The Freedom of Information and Protection of Privacy Act, 1987*, which is not yet in force either. It is not completely clear from the definition section of *Bill 34* whether it is intended to apply to CASs and the Register or whether the *C.F.S.A.* governs. Discussions with representatives from the Ministry of Community and Social Services have not clarified the situation. There are certain basic similarities between Part VIII of the *C.F.S.A.* and *Bill 34*. Both provide individuals with access to information about themselves, including CAS files. Both assure a degree of confidentiality for information about individuals and provide a process for correction of information, including resort to an independent tribunal which may resolve disputes about inaccurate information. **Whichever piece of legislation ultimately applies, CASs and child protection workers will have to be able to function in an environment in which the information contained in CAS files concerning allegations of abuse may be subject to scrutiny and challenge, and in which protection of privacy is assured.**

A detailed discussion of these two alternative legislature schemes and their implications for the Register and CAS records is beyond the scope of our mandate, but a few general comments are appropriate.

**The operation of any child abuse register should be governed by special, detailed legislative provisions dealing with access to information, confidentiality and correction of errors. It should thus be unnecessary for more general legislative schemes dealing with protection of privacy to apply to the Register.** This is how the *C.F.S.A.* deals with the Register, and this should continue to be the case, regardless of which piece of legislation applies to child protection matters in general. The Register is intended to serve as a vehicle for limited dissemination of highly personal information, and so must be excluded from general privacy pro-

visions. *Bill 34* has clauses which might be interpreted to exclude the operation of the Register from its scheme, or specific legislative action may be necessary to achieve this.

While Part VIII of the *C.F.S.A.* allows CASs to share information with each other, with appropriate safeguards, it is not so clear that *Bill 34* allows this. The functioning of an effective child protection system and a useful register require information sharing. Just as *Bill 34* allows police forces to share information, provision must be made for child protection agencies to share information.

The need for CASs to share information is probably greatest in those places where more than one agency is responsible for child protection. In Toronto, Hamilton and Essex County, there are denominational CASs, in addition to the main non-denominational agency. In these localities information sharing is vital. In particular, if CASs are to be expected to keep track of their own suspected child abuse cases without the aid of a central register, measures will have to be taken in these localities to ensure adequate sharing of information.

**In the long term, consideration must be given to issues related to instantaneous interagency information transfer.**

It seems inevitable that all CASs will eventually have computerized records and filing systems which could technologically be linked together. The speed with which local child protection agencies will develop compatible computerized record systems will partly depend on the policies and financial incentives of the Ministry of Community and Social Services. If agency files can be linked together, this raises the issue of whether workers from one CAS should be able to "search" the files, or at least file-indexes, of other agencies. The issue of whether there should be a province-wide information system for child protection cases will have to be faced. Such a system could affect local CAS autonomy, as well as facilitating the exchange of information. Many of the civil liberties issues addressed in this report will have to be considered. **We recommend that in its long-term planning the Ministry give careful study to these and related questions.**

## SUB-REGISTERS NOT RECOMMENDED

In the course of our deliberations we considered various models of sub-registers. Two not previously mentioned are worthy of brief discussion: **A "Register of Children at Risk of Abuse" and a "Register of Suspected Abusers". Both would primarily serve the function of assisting in the identification of abuse cases. Neither is recommended as the social and financial costs outweigh any utility.**

## Register of Children at Risk of Abuse

This Register would record the names of children under 16 who are confirmed or suspected victims of child abuse. The primary purpose of this Register would be to facilitate identification of cases of intra-familial abuse, though it would also have potential research and case management functions. As the Register would focus on child victims rather than on abusers, civil liberties concerns would be limited, though not eliminated.

The Register of Children at Risk of Abuse would receive reports of children when there was "credible evidence" to believe they were abused. The Register would only list victims of intra-familial abuse, or situations where a parent or guardian failed to protect a child. There would also be a record of siblings of victims of intra-familial abuse.

There would be no record on this Register of victims of extra-familial abuse, for example, children abused by a teacher or a stranger. In situations of suspected intra-familial abuse, knowing that a child or sibling is on the Register and may have been abused before, has the potential to assist in identification of abuse. However, in situations where extra-familial abuse is being investigated, knowing that the child may have been abused before does little to assist the investigation.

Reports to the Register of Children at Risk of Abuse would identify suspected and confirmed victims, and their siblings; they would describe the nature of the abuse and the identity of the alleged abuser. Indexing of the system and access to it would only be through the name of the child or sibling. Unlike the present Register, it would not be possible to have access by giving the name of a suspected or confirmed abuser.

CAS workers would have access to the Register only for the purposes of investigation and treatment. The CAS could share information from the Register with other investigative and treatment personnel, but not others. It would be an offence to disclose information from the Register to unauthorized persons or to use the Register for screening.

If access to the Register of Children at Risk of Abuse can only be achieved through a child's name, misuse of the Register for unauthorized screening purposes would be unlikely. This Register would, nevertheless, have the same potential to assist in the identification of intra-familial abuse cases as the present system.

In addition to CAS workers, there would be access to the Register of Children at Risk of Abuse for the Official Guardian and coroners, Ministry approved researchers, and Ministry employees engaged in supervision of CASs.

Parents of children listed on the Register would be notified at the time of registration that their children had been identified as being at risk of abuse. They would be informed of the limited purposes of the Register and of their right to in-

spect the entry concerning their children. Focussing on the identification of children at risk rather than suspected abusers may make the process more psychologically acceptable to families affected. All identifying information about a case, that is, the names of children and parents, would be removed from the Register when the child reaches 18.

There would also be a right for parents to seek expunction before a Hearing Officer, though the criteria for listing would be "credible evidence of abuse". The limited access and purposes would probably mean that expunction would not frequently be sought.

The Register of Children at Risk of Abuse would be a child-focussed tool with utility for identification, research and case management. It might also have some symbolic and deterrent effect. Figures from the present Register indicate that in the 1979 to 1986 period, about 85 percent of identified abuse cases included intra-familial abuse (i.e., committed by a parent, step-parent, common-law partner or sibling). Though this figure may understate the level of extra-familial abuse, it suggests that a Register of Children at Risk would be useful for a substantial number of cases.

A Register of Children at Risk might be preferable to the present Register in that there would not be the present inappropriate labelling of individuals as "verified abusers" on the strength of only "credible evidence". While this Register may have some negative psychological implications for those individuals listed as "parents of children at risk of abuse", they would probably feel less stigmatized than at present. Civil liberties concerns would be lessened, though there would still be a centralized record containing identifying information about individuals who were merely suspected of being abusers.

In rejecting a Register of Children at Risk of Abuse, we were much influenced by the conclusion from our study that the present Register has relatively little utility for identification of child abuse cases. The proposed Child Abuse Research Register clearly has more utility for research and would be less costly to operate in financial and legal terms.

**Register of Suspected Abusers**

A Register of Suspected Abusers could operate in combination with the proposed Register of Child Abusers. The latter Register would list those who were confirmed abusers, while the Register of Suspected Abusers would record those for whom there was only "credible evidence of abuse". Suspected abusers would have a right to notification and an expunction hearing, much as at present. Because the standard for listing would be relatively low, access would be limited, primarily to CAS workers investigating abuse cases. Screening would be strictly prohibited for the Register of Suspected Abusers, but could be done using the Register of Child Abusers with its high standards for registration and its greater safeguards.

The Register of Suspected Abusers could be used for identification, research and case management. It may be argued that it has a deterrent effect for those who are identified but not proven to be abusers. For the reasons set out in the assessment of the present Register, we feel that the actual utility of a Register of Suspected Abusers for identification would be narrow. Its civil liberties costs are too high, and there is a significant potential for misuse for screening. As at present, there may be a very high psychological and social cost for those improperly identified as abusers. The research and case management functions can be much more effectively performed by the proposed Child Abuse Research Register.

## FOOTNOTES

1. Sexual offences against children include references to the provisions of Bill C-15, the new federal amendments to the *Criminal Code*.

2. A statement made to a person in authority is inadmissable if involuntary, that is, induced by a "promise of advantage" made by a person in authority. A social worker investigating a child abuse case would almost certainly be considered a person in authority; *R. v. Royden Novasse lutzi (No. 1)* (1981), 5 W.C.B. 81 (Ont. H.C.). A promise that if a statement is made the person suspected of an offence will not be prosecuted is an improper inducement which will render the statement inadmissable; *R. v. Kalishnikoff* (1981), 21 C.R.(3d) 296 (B.C.S.C.). A promise by a person in authority not to use a statement in a prosecution or to keep it "confidential" will also render the statement inadmissable, if the promise was made insincerely or with the intention of tricking or trapping the person making the statement: *R. v. Frank* (1969), 69 W.W.R. 558, at 593 (B.C.C.A.). Constitutional arguments could be made under the *Charter of Rights* s.7 (no deprivation of liberty except in accordance with the principles of fundamental justice) and s.13 (self-incrimination) to attempt to block admission of such a statement.

3. At present there is no legislation governing the disclosure of information by the CAS. Two pieces of legislation, Part VIII of the *C.F.S.A.* and the *Freedom of Information and Protection and Privacy Act, 1987* (*Bill 34*) have both received legislative approval, but are not yet in force. As discussed later in this Chapter, it is not yet clear which piece of legislation applies to CASs and the Register. The *C.F.S.A.* would not seem to allow a CAS to inform an employer that an employee has a history of abuse, without the consent of the employee (see s.166). On the other hand, the *Freedom of Information Act*, if applicable, might allow such disclosure in certain circumstances; s.42 (h) provides: "An institution shall not disclose personal information . . . except . . . in compelling circumstances affecting the health or safety of an individual if open disclosure thereof is mailed to the last known address of the individual to whom it relates". One would expect that without specific legislative authorization CASs will be unwilling to make any disclosures.

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